

**Deposition of:**

Douglas Thompson, M.D.

**Case:**

Jeffery A. Weisman, et al.

VS

Barnes-Jewish Hospital, et al.

**Date:**

11-03-2022



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Case: 4:19-cv-00075-JAR Doc. #: 268-6 Filed: 02/17/23 Page: 2 of 167 PageID #: 5062

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

JEFFERY A. WEISMAN, et al.,               )  
  )  
Plaintiffs,                                     )  
  )  
vs.   ) NO. 4:19-cv-75-JAR  
  )  
BARNES JEWISH HOSPITAL, et al.,            )  
  )  
Defendants.                                      )

**CERTIFIED TRANSCRIPT**

Deposition of DOUGLAS THOMPSON, M.D., taken on  
Behalf of the Plaintiffs.

November 3, 2022

Reported by Sandra Meintrup, CCR, CSR

Douglas Thompson, M.D. - November 3, 2022  
Jeffery A. Weisman, et al. vs Barnes-Jewish Hospital, et al.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

JEFFERY A. WEISMAN, et al., )  
 )  
Plaintiffs, )  
 )  
vs. ) NO. 4:19-cv-75-JAR  
 )  
BARNES JEWISH HOSPITAL, et al., )  
 )  
Defendants. )

Deposition of DOUGLAS THOMPSON, M.D.,  
produced, sworn and examined on the 3rd day of  
November, 2022, between the hours of nine o'clock in  
the forenoon and three o'clock in the afternoon of that  
day in the law offices of Shands, Elbert, Gianoulakis &  
Giljum, LLP, 8235 Forsyth Boulevard, Suite 700, in the  
County of St. Louis, State of Missouri, before Sandra  
Meintrup, CCR #614, in a certain cause now pending in  
the United States District Court for the Eastern  
District of Missouri, Eastern Division, between JEFFERY  
A. WEISMAN, et AL., Plaintiffs, vs. BARNES JEWISH  
HOSPITAL, et al., Defendants; on behalf of the  
Plaintiffs.

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CERTIFIED QUESTIONS

QUESTION NO. 1: PAGE 162 LINE 23

Q. What was that person's name?

QUESTION NO. 2: PAGE 163 LINE 24

Q. Okay. And you know the person's name and  
you're going to decline to provide it; is that right?

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APPEARANCES

For Plaintiffs: The Elster Law Office, LLC  
Attorneys at Law  
225 South Meramec, Suite 325  
St. Louis, Missouri 63105  
By: Mr. Henry P. Elster  
henry@elsterlaw.com

Marek Weisman LLC  
Attorneys At Law  
55 East Monroe Street, Suite 3800  
Chicago, Illinois 60603  
By: Ms. Rachel C. Rutter  
rrutter@marekweisman.com

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**APPEARANCES CONTINUED**

**For Washington University Defendants:**

Shands, Elbert, Gianoulakis &  
Giljum, LLP  
Attorneys at Law  
8235 Forsyth Boulevard, Suite 700  
St. Louis, Missouri 63105  
By: Mr. Kevin Anthony Sullivan  
ksullivan@shandselbert.com

**For Defendants BJC and BJH:**

Husch Blackwell  
Attorneys at Law  
190 Carondelet Plaza, Suite 600  
St. Louis, Missouri 63105  
By: Ms. Theresa Mullineaux  
theresa.mullineaux@huschblackwell.com

**Videographer:** 360 Litigation Services  
Curt Shaw

**Also present:** Jeffery A. Weisman

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1 VIDEOGRAPHER: We're on the record at 9:31  
2 a.m. Today's date is November 3rd, 2022. We're here  
3 today for deposition of Dr. Douglas Thompson to be  
4 taken in the matter of Jeffery A. Weisman, et al.,  
5 versus Barnes Jewish Hospital, currently pending in the  
6 United States District Court for the Eastern District  
7 of Missouri, Eastern Division. Cause No.  
8 4:19-CV-75-JAR.

9 At this time I would ask Counsel to give their  
10 appearances for the record, beginning with the taking  
11 party.

12 MR. ELSTER: Henry Elster for the Plaintiffs

13 MS. RUTTER: Rachel Rutter for the Plaintiffs.

14 MR. SULLIVAN: Kevin Sullivan for the  
15 Washington University defendants.

16 MS. MULLINEAUX: Theresa Mullineaux for  
17 Defendants BJC and BJH.

18 VIDEOGRAPHER: Very good. Will the reporter  
19 please swear in the witness.

20 DOUGLAS THOMPSON, M.D.,  
21 of lawful age, being duly sworn to tell the truth, the  
22 whole truth, and nothing but the truth, deposes and  
23 says on behalf of the Plaintiffs, as follows:

24 DIRECT EXAMINATION

25 BY MR. ELSTER:



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1 Q. Please state your name.

2 A. Douglas Royce Thompson.

3 Q. Dr. Thompson, what is your address?

4 A. 1400 Fawnvalley Drive, St. Louis.

5 Q. Have you ever had your deposition taken  
6 before?

7 A. No.

8 Q. Have you ever testified in court before?

9 A. No.

10 Q. Have you ever been listed as an expert witness  
11 in any court proceeding?

12 A. No.

13 Q. Have you ever been a party to a lawsuit  
14 before?

15 A. No.

16 Q. What did you do to prepare for the deposition  
17 today other than talking to your attorney?

18 A. I'm sorry, what was the question?

19 Q. What did you do to prepare for the deposition  
20 today?

21 A. Spoke with the attorney. And then I reviewed  
22 documents that were supplied to me.

23 Q. What documents did you review?

24 A. Mostly e-mails.

25 Q. What types of e-mails?

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1 A. E-mails between myself, Dr. Benzinger.

2 E-mails that were forwarded to me from Dr. Benzinger,  
3 Dr. Cox. That's most of it.

4 Q. Anything else?

5 A. Not that I can think of off the top of my  
6 head.

7 Q. How long did you prepare for the deposition  
8 today?

9 A. You mean how much time did I spend with Kevin  
10 Sullivan?

11 Q. That in addition to any other preparation you  
12 did.

13 A. I think Mr. Sullivan and I spent about two and  
14 a half hours together on Tuesday. And then I reviewed  
15 some documents this morning for maybe a half hour.

16 Q. Was anyone else present for the meeting  
17 earlier this week with Mr. Sullivan?

18 A. Joe Sklansky was there for about an hour. He  
19 left after about an hour.

20 Q. Any other prep before Tuesday?

21 A. I think I looked at some of the documents in  
22 the e-mail when I first got the e-mail from Mr.  
23 Sullivan.

24 Q. When was that?

25 A. I don't recall the date. It would have been

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1 whatever day the e-mail was sent to me.

2 Q. Do you remember roughly what week it was?

3 A. I could look in my phone and retrieve the  
4 e-mail.

5 Q. Was it this month; do you know?

6 A. It was -- well, it's November, right? So I'm  
7 not sure if it was this month or the end of October.

8 Q. Okay. Okay. If you can look at Exhibit No.  
9 1, what is that?

10 A. Looks like my LinkedIn page.

11 Q. I want to go through some of the information  
12 on it. Did you create your LinkedIn page?

13 A. Yes.

14 Q. Okay. If you can flip to page 3 of that. And  
15 four.

16 A. Uh-huh.

17 Q. Is your educational background accurate  
18 beginning on pages -- on page 4?

19 A. Yep.

20 Q. Okay. And that would include the Indiana  
21 University, the Children's Memorial Hospital-  
22 Northwestern, University of Colorado, and University of  
23 California, San Diego?

24 A. Yep. Yes.

25 Q. Okay. You became the associate residency

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1 program director at Washington University in the  
2 Department of Radiology in August of 2017?

3 MR. SULLIVAN: Radiology or anesthesiology?

4 Q. (By Mr. Elster) Sorry.

5 A. In 2017, correct.

6 Q. What does that job entail?

7 A. I was new to the institution so mostly that  
8 job was getting the lay of the land before I took over  
9 as residency program director.

10 Q. So was it primarily a training position to be  
11 residency director?

12 A. I'm not sure that I would describe it as  
13 training. It was mostly gaining a familiarity.

14 Q. And that would take about a year to gain  
15 familiarity?

16 A. I think a year was the planned transition time  
17 between myself and Dr. Benzinger.

18 Q. Was Dr. Benzinger the head of the department  
19 before you were?

20 A. No, Dr. Evers was the head of the department.  
21 Dr. Benzinger was the residency program direct.

22 Q. So Dr. Benzinger occupied that position. You  
23 were kind of the heir apparent for that position?

24 A. Correct.

25 Q. All right. What does it mean when you say

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1 getting the lay of the land?

2 A. So as it's defined on that page, I started my  
3 career at Seattle Children's, which is a completely  
4 separate institution in a completely separate state.  
5 So getting the lay of the land, what I mean by that is  
6 getting to know the people that are involved in the  
7 program. Getting to know the residents. Getting to  
8 know the clinical environment as well, because I'm  
9 still a clinician.

10 Q. Was it a full-time position?

11 A. Can you clarify what you mean? I mean, I am a  
12 1.0 FTE. I'm a full-time employer -- or employee. But  
13 the administrative job is not full time.

14 Q. Okay. So I guess can you explain, and I'm  
15 focused on August 2017 to July 2018.

16 A. Uh-huh.

17 Q. You were a clinician during that time period?

18 A. Yes.

19 Q. And in addition to that, focus on what the  
20 function of the associate residency program director  
21 was.

22 A. Correct.

23 Q. And other than getting familiarity with people  
24 and gaining familiarity with the program, what other  
25 responsibilities did that include?

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1           A. With regards to the associate program  
2 director?

3           Q. Yes.

4           A. Understanding more about the logistics of how  
5 their particular program works.

6           Q. Okay. Did you have any supervising  
7 responsibility?

8           A. As a clinician? Or as a....

9           Q. First as an associate residency program  
10 director.

11          A. That's not the way I would characterize it. I  
12 mean, the supervising role would have fallen to Dr.  
13 Benzinger.

14          Q. Okay. Did you do any oversight of residents?

15          A. Again, if you're -- if you're asking as the  
16 associate residency program director, did I do  
17 oversight, it gets a little complicated. Because I do  
18 oversight as a clinician and so those two do overlap.

19          Q. As a clinician did you do any supervising or  
20 oversight during this time period?

21          A. Of course.

22          Q. Did any of that supervising or oversight  
23 extend to Dr. Jeffery Weisman?

24          A. During that time I don't recall.

25          Q. What about during the time period after that

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1 ending in July of 2018, was there any supervising or  
2 oversight that you personally did with Dr. Weisman?

3 A. I don't recall. I think that's around the  
4 time that Dr. Weisman left.

5 Q. Which specific time period?

6 A. Around July of 2018.

7 Q. Did you ever work with him?

8 A. I did.

9 Q. As a clinician?

10 A. I did.

11 Q. How many times?

12 A. I would guess a handful of times.

13 Q. Do you have any recollection when the first  
14 one was?

15 A. I don't have any recollection of the first  
16 time I worked with him, no.

17 Q. What about the second time?

18 A. I don't recall the second time I worked with  
19 him. If your question is do I recall specific  
20 instances where I worked with him, yes. Can I  
21 characterize those as first or second, no.

22 Q. What specific instances do you recall?

23 A. There was an instance where we were at the  
24 Children's Hospital 'cause that's where I worked  
25 primarily. I believe my assignment was just with Dr.

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1 Weisman, meaning I didn't have any other rooms to  
2 supervise. I believe the patient was an orthopedic  
3 patient. The patient was asleep. The surgery was in  
4 progress. I left briefly, maybe to use the rest room  
5 or for some other reason.

6 When I came back it became apparent that Dr.  
7 Weisman had tried to refill the vaporizer, which is  
8 essentially the mechanism that supplies gas or volatile  
9 anesthetic to a patient to keep them asleep. He was  
10 successful in refilling the vaporizer; however, he was  
11 not successful in reengaging the vaporizer with the  
12 machine. So the patient was not receiving a continuous  
13 supply of gas anesthetic, which would have put the  
14 patient at risk for what we call recall, which is  
15 awareness under anesthesia or waking up in the middle  
16 of the procedure.

17 Q. Was this the first -- one of the first times  
18 you worked with him?

19 A. I don't recall if it was the first, second,  
20 third time I worked with him. It's just an incident  
21 that stuck in my mind for obvious reasons.

22 Q. This was at Children's Hospital?

23 A. Correct.

24 Q. Was anyone else working with you and Dr.  
25 Weisman at the time?



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1           A. I don't believe so, no. You mean from an  
2 anesthesia perspective?

3           Q. Correct.

4           A. No.

5           Q. Do you recall any other specific instances in  
6 which --

7           A. -- Working with Dr. Weisman?

8           Q. Right.

9           A. No.

10          Q. Do you recall generally that you may have  
11 worked with him on other occasions?

12          A. It's possible but I don't recall any details.

13          Q. Do you know if Dr. Weisman ever received any  
14 formal disciplinary action from the anesthesiology  
15 department at Washington University?

16          A. I do not know any details about that, no.

17          Q. You don't know one way or the other?

18          A. I don't know one way or another.

19          Q. Do you know if there were any discussions  
20 about him?

21          A. Discussions about him?

22          Q. Receiving formal disciplinary action.

23          A. I believe there were, yes.

24          Q. What do you know about that?

25          A. I think before Dr. Weisman left there was

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1 discussions about what would be the most appropriate  
2 way to sort of go forward with the American Board of  
3 Anesthesiology. Yeah.

4 Q. Who were parties to those discussions?

5 A. Dr. Benzinger. I believe Dr. Cox was looped  
6 into that conversation. It's possible that Dr. Groener  
7 was as well. Myself.

8 Q. And to be clear, you don't know if there was  
9 ever any formal disciplinary action that was proposed?

10 A. So, I did ask that question at some point of  
11 Dr. Benzinger. Because after Dr. Weisman left I had to  
12 fill out some regulatory documents. And in that  
13 communication I was led to believe that no formal  
14 disciplinary action had been taken.

15 Q. Okay. Other than that one incident you  
16 specifically recall, do you have any other specific  
17 memories of personally observing Dr. Weisman working as  
18 a clinician and a medical provider?

19 A. That's really the only instance that comes to  
20 mind.

21 Q. Do you have any views about his capabilities  
22 as an anesthesiologist?

23 A. Can you clarify what you mean? I mean, he  
24 never finished a residency so I wouldn't think that  
25 he'd be qualified to practice anesthesiology.

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1 Q. Outside of a rigid completing the  
2 anesthesiologist program, I guess -- I'll rephrase it.

3 Do you have any views about his capabilities  
4 as an anesthesiology resident?

5 A. I think -- I think the general consensus of  
6 his performance was that he was probably behind where  
7 many of his peers were. I think there was a discussion  
8 about whether or not he would ever catch up to where  
9 his peers were or where he should be.

10 I think, you know, there were some reviews of  
11 him that were poor, meaning the reviewer felt that he  
12 was performing poorly. I think there were other  
13 reviews where it seemed to indicate that he was perhaps  
14 on par with where he should be.

15 So in general I'd say it was a mix -- mixed  
16 bag.

17 Q. When you say general consensus, general  
18 consensus between who?

19 A. Between those that were conducting reviews.

20 Q. And who would that be?

21 A. I'm sorry?

22 Q. Who would that be?

23 A. Well, I mean, in general the clinicians that  
24 were working with him. And also the rotation  
25 coordinators for the various rotations that he

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1 completed.

2 Q. Were you ever -- did you ever do any reviews  
3 of Dr. Weisman?

4 A. I -- I don't recall. If I worked with him in  
5 a clinician oversight capacity, I probably filled out  
6 an evaluation. But I don't have any details.

7 Q. Were you ever rotation coordinator for him?

8 A. I was not.

9 Q. When you say the general consensus, was that  
10 also your belief?

11 A. Well, certainly the instance that I recall  
12 where he forgot to fill the vaporizer is concerning.  
13 And, yes, I would say that that would be concerning for  
14 being below par with his peers, yes.

15 Q. Have you ever communicated with anyone else in  
16 another residency program in the United States about  
17 Dr. Weisman?

18 A. So, I know because I've looked at documents  
19 that I had a phone call with Dr. Macario, who I believe  
20 is at Stanford. But I do not recall any details of  
21 that phone call.

22 I believe I've also communicated via e-mail  
23 with somebody from Duke, but I never spoke with her on  
24 the phone.

25 Q. Who was the individual at Duke?

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1           A. I don't recall her name. Epling perhaps, Dr.  
2 Epling. I'm not confident of that name.

3           Q. Outside of people at Washington University,  
4 have you ever expressed what you term the general  
5 consensus about Dr. Weisman to anybody else?

6           MR. SULLIVAN: Object to form. Vague.  
7 Go ahead and answer.

8           A. Outside of Wash U., other than the instances  
9 that you just elucidated?

10          Q. (By Mr. Elster) Correct.

11          A. I don't recall.

12                 Specific to the common general consensus?

13          Q. Correct.

14          A. I don't recall, no.

15          Q. What about otherwise, any communications about  
16 Dr. Weisman with anyone else?

17          A. On the request of Dr. Weisman documents were  
18 sent to Chicago, Dr. -- and Louisiana. I think those  
19 were Dr. Fox and Dr. Kaye, K-a-y-e.

20          Q. Anyone else outside of those people?

21          A. I mean, there was a Dr. Patil, P-a-t-i-l.

22          Q. Anyone else?

23          A. Not that I recall off the top of my head.

24          Q. When you became residency program director in  
25 July of 2018, what were your responsibilities?

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1           A. That's a pretty broad question. I mean,  
2 responsibilities to make sure that the program stays in  
3 the good graces of ACGME. You're responsible for  
4 resident recruitment. The oversight of the various  
5 fellowships there are at Wash U. also fall under the  
6 program director. You have oversight over the 80 plus  
7 residents that are in the program.

8           Q. When you say good graces of the ACGME, what  
9 does that stand for?

10          A. Well, there's a lot of regulatory requirements  
11 that the ACGME puts forth. And so try to navigate all  
12 the requirements and make sure that you're meeting  
13 their benchmarks.

14          Q. Are you familiar with any requirements from  
15 the ACGME as it relates to a residency's training  
16 file -- resident's training file?

17          A. Can you be more specific?

18          Q. Sure. Is there any documentation that you're  
19 aware of that the ACGME requires to keep in connection  
20 with the residents training at a particular institute?

21          A. The ACGME requires that we submit milestones.

22          Q. What do you mean by milestones?

23          A. I mean, the best way I would describe it is  
24 you're trying to judge as best you can as a trainee  
25 progresses through the program whether or not they're

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1 reaching certain benchmarks in what is deemed an  
2 appropriate time so that they can complete the training  
3 program on time with their peers.

4 Q. When you say submit them, submit to who?

5 A. Submit to the ACGME.

6 Q. So as far as you're aware, outside of those  
7 milestones, is there any other documents that needed to  
8 be submitted to the ACGME?

9 A. Are you asking at the time that I was the  
10 residency director or are you asking now?

11 Q. Well, I'll ask both. So at the time you were  
12 the residency director what needed to be submitted?  
13 And then I'll ask now.

14 A. So at the time I was the residency, in  
15 addition to the milestones we also submitted whether or  
16 not a resident completed the program. And I think that  
17 that was the extent of my knowledge at the time.

18 Q. Okay. What about now?

19 A. So subsequent I believe I -- subsequent to me  
20 being the program director there was this question at  
21 the ACGME meeting raised about a summative evaluation  
22 of the residents.

23 Q. So you said subsequent. When did you stop?  
24 Because your -- at least the LinkedIn page says present  
25 as program director.

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1           A. So I would have stopped, I believe it was  
2           September of last year.

3           Q. Okay. So I'll just -- so September of 2021  
4           would be the end date when you were the program  
5           director?

6           A. That sounds right.

7           Q. And I'll ask, at that time you became vice  
8           chair for education?

9           A. Correct.

10          Q. I'll get to that in a second.

11                 So subsequent to September of 2021 you learned  
12           that there was something called an ACGME summative  
13           evaluation?

14          A. I believe it was subsequent to me leaving the  
15           role of residency program director, correct.

16          Q. What is an ACGME summative evaluation?

17          A. So traditionally what the program did was once  
18           the resident finished training, we would put together a  
19           fairly standardized letter that listed the various  
20           competencies put forth by the ACGME, which I won't be  
21           able to sum all but there's five. So like  
22           professionalism, medical knowledge, system based  
23           practice. There's a couple others.

24                 So the document kind of reviews those  
25           competencies and states that the resident met those



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1     competencies. It also talks about a quality  
2     improvement project that they were involved in. And it  
3     talks about a research project that they were involved  
4     in. And then sort of the concluding paragraph is that  
5     the resident met all of these requirements and is  
6     competent to practice anesthesiology.

7             So that is what we felt as a program was meant  
8     by a summative evaluation.

9             Q. Okay. And that was supposed to be submitted  
10    when?

11            A. So -- I don't believe I knew that specifically  
12    when I was the program director. But subsequently I  
13    found out that it's 30 days after the graduation.

14            Q. So it's your understanding currently that the  
15    ACGME requirements mean that you have to submit a  
16    summative evaluation 30 days after someone matriculates  
17    from the residency program?

18            A. After someone finishes the program, yes.

19            Q. Finishes the program?

20            A. Correct.

21            Q. Okay. And that doesn't necessarily mean they  
22    graduate?

23            A. Those are different things, yes.

24            Q. Right. So it's a 30 day from cessation, from  
25    when it stops?

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1 A. It's 30 days from completing the program.

2 Q. Okay. So it's -- so when you say completing  
3 the program, so that would be completing the entire  
4 residency program?

5 A. Correct.

6 Q. So if someone were to leave before the  
7 completion of the residency program would there be a  
8 requirement for a summative evaluation?

9 A. So again, if you're asking what my  
10 understanding was when I was the program director?

11 Q. Right.

12 A. I did not know that there was such a  
13 requirement.

14 Q. Okay. So subsequent to September of 2021 is  
15 it now your belief there is a requirement for that?

16 A. It's now my understanding the ACGME requires  
17 that, yes.

18 Q. So if someone were to leave, it's a four- or a  
19 five-year residency program?

20 A. Four years.

21 Q. Four years. If someone were to leave for any  
22 reason six months in, it is your current understanding  
23 there is a summative evaluation required within 30 days  
24 of departure?

25 A. Correct.

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1 Q. Okay. And the summative evaluation would  
2 consist of essentially an assessment for all of those  
3 five knowledge areas?

4 A. Correct.

5 Q. Okay. Who -- who completes the summative  
6 evaluation now?

7 A. So are you asking when a -- when a resident  
8 finishes the program?

9 Q. Correct.

10 A. Graduates?

11 Q. What's the process for compliance?

12 A. So program director, which is Dr. Mitchell,  
13 would complete that.

14 Q. Dr. Mitchell exclusively?

15 A. Yes, I believe so. I mean, she might have  
16 some administrative help but it's Dr. Mitchell that  
17 completes them.

18 Q. Okay.

19 A. It may not be Dr. Mitchell that submits them  
20 to the ACGME.

21 Q. Okay.

22 A. But she's the one that fills out the....

23 Q. And what information is relied upon? Because  
24 if the head doesn't supervise the physician or the  
25 resident, how are they to complete the summative

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1 evaluation?

2 A. They review the resident's file and they  
3 also -- we meet with the residents twice a year. And  
4 so part of that biannual discussion is covering things  
5 like what was their research project, what was their QI  
6 project, who was their mentor.

7 Q. Okay. What changed subsequent to you leaving  
8 as program director to where you now believe the --  
9 it's required 30 days from departure?

10 A. Well, it was brought to our attention by the  
11 ACGME.

12 Q. The ACGME. And how did they do that?

13 A. The communications via e-mail.

14 Q. Do you remember when approximately that was  
15 received?

16 A. I don't.

17 Q. Was it directed to you?

18 A. I don't think the initial outreach from the  
19 ACGME was distributed to me but I could be wrong.

20 Q. If not you, do you have any understanding of  
21 who it would have been directed to?

22 A. It might have been directed to Tia Drake,  
23 who's the DIO, which is essentially the University's  
24 liaison with the ACGME.

25 Q. Okay. So is it fair to say that after

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1 September of 2021 the practice of the Department of  
2 Anesthesiology is 30 days of when a resident leaves  
3 there is now a summative evaluation?

4 MR. SULLIVAN: I'll object to form. Vague.  
5 Go ahead and answer.

6 (Discussion was held off the record.)

7 A. So I would argue that we were already in  
8 compliance with that in that it's unusual for a  
9 resident to leave the program before completing the  
10 program. So what we were doing was in compliance.  
11 It's in the instance where we have somebody leave the  
12 program early we were unaware of this requirement for a  
13 summative evaluation.

14 Q. (By Mr. Elster) Okay. So I'll try to come at  
15 it a different way.

16 So when you were program director and  
17 subsequent to that, is it -- to the present, is it your  
18 understanding that upon graduation or matriculation  
19 there was always a summative evaluation created? The  
20 instance -- well, is that right?

21 A. If the resident completed training, yes.

22 Q. Okay. But in the instances in which the  
23 training was not completed there and the resident left  
24 for other reasons, there was not necessarily a  
25 summative evaluation created?

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1 A. You're asking me my knowledge as the program  
2 director?

3 Q. Correct.

4 A. At that time?

5 Q. Correct.

6 A. So sorry. What was the question?

7 Q. Okay.

8 A. When I was the program director.

9 Q. When you were the program director --

10 A. Yes.

11 Q. -- if someone did not complete the four-year  
12 residency program?

13 A. Yes. It was not my understanding that there  
14 was a summative evaluation that was needed.

15 Q. Okay. And in conjuncture with that  
16 understanding would one be created if someone left?

17 MR. SULLIVAN: Object to form.

18 A. Well, so in Dr. Weisman's instance, once the  
19 ACGME brought this requirement to our attention, we  
20 created one.

21 Q. (By Mr. Elster) And that would have been  
22 after September of 2021?

23 A. I believe so, yes.

24 Q. Okay. So he did not have one until sometime  
25 after September of 2021?

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1 A. Correct.

2 Well, he did not have what the ACGME considers  
3 a summative evaluation, yes.

4 Q. Are you saying Washington University had what  
5 they considered to be a summative evaluation?

6 A. Well, what we were using was a summary of his  
7 progress along the milestones. Since he had left the  
8 program early that's what we had thought would suffice  
9 as a summative evaluation, was tracking his milestones  
10 before he left the program.

11 Q. And the ACGME has since informed the  
12 department that that is not a summative evaluation?

13 A. Correct.

14 Q. When you were program director would residents  
15 sometimes transfer to Washington University?

16 A. To Washington University?

17 Q. Correct.

18 A. I don't believe when I was program director I  
19 had anybody transfer into the program. I don't believe  
20 so.

21 Q. What about transfer out?

22 A. So we -- we had a resident leave the program  
23 because he felt anesthesiology was a poor fit, and we  
24 had a resident that was fired. But I don't -- other  
25 than those two instances, when I was program director I

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1 can't recall residents transferring out.

2 Q. Okay. Or transferring in?

3 A. Yeah, I don't believe we had anybody transfer  
4 in. Now, sometimes in -- when we do recruitment  
5 through the ERAS system we'll sometimes take a resident  
6 that may have done a year of training already, like an  
7 internship, and then transferred directly into the  
8 anesthesia training. It's possible that that occurred  
9 when I was the program director but I don't recall.

10 Q. Do you have an understanding of what type of  
11 documentation the department would need to effectuate  
12 an incoming transfer?

13 A. Are you asking me as the program director did  
14 I know that?

15 Q. Yeah. No, I'm asking -- yes. Yes.

16 A. So as the program director, no, I don't think  
17 I had any idea what kind of documentation was required.

18 Q. Independent of being the program director?

19 A. Are you asking my knowledge now?

20 Q. Yes.

21 A. So, now, yes, I understand that there is  
22 documentation required.

23 Q. And what is understanding of what's required?

24 A. I -- I think one of the things that they need  
25 is a summative evaluation. That's due at the time that



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1 the transfer is taking place. And there's probably  
2 something else but that's the one that sticks in my  
3 mind.

4 Q. So your understanding now is that the  
5 department needs an ACGME summative evaluation to  
6 accept a transfer in an anesthesiology resident.

7 A. The department needs a summative evaluation.

8 Q. A summative evaluation?

9 A. Correct.

10 Q. Okay.

11 A. At the time of transfer.

12 Q. At the time of transfer?

13 A. Right.

14 Q. Without that can they accept a resident?

15 A. I don't know specifically. I just know  
16 that -- that -- my understanding is now that the  
17 ACGME -- that is one of the things that the ACGME  
18 requires, is a summative evaluation at the time of  
19 transfer.

20 Q. A summative evaluation is -- is that something  
21 that's defined by the ACGME?

22 A. I think the wording around what comprises a  
23 summative evaluation by the ACGME is pretty nebulous.  
24 But what we came up with is something similar to what  
25 we would do if the resident had finished the program.

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1 We try to speak to how they performed in those medical  
2 competencies. So medical knowledge, professionalism,  
3 etc., etc.

4 Q. What was the difference between what the ACGME  
5 considered a summative evaluation and the milestones  
6 that were previously being provided?

7 A. Well, I guess the milestones, if you look at  
8 the actual form that the milestones are tracked on,  
9 it's really just sort of -- there's five columns and  
10 you're basically trying to place where the resident is  
11 on those five columns as they progress through  
12 training. And that -- for reasons that remain to be  
13 elucidated by the ACGME, if the ACGME didn't feel that  
14 that met the -- met the requirement.

15 Q. Are you familiar with any anesthesiology  
16 program in the United States that would take a resident  
17 from another anesthesiology program without a summative  
18 evaluation?

19 A. I don't have knowledge about that one way or  
20 another.

21 Q. Similarly, are you aware of any anesthesiology  
22 program which would accept a transfer of a resident  
23 without any sort of transcripts or records from the  
24 prior institution?

25 MR. SULLIVAN: Object to form.

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1           A. I don't have knowledge one way or another but  
2           that would seem unlikely.

3           Q. (By Mr. Elster) Why would it seem unlikely?

4           A. Well, I think any program would want to know,  
5           you know, what it is that they're getting. What kind  
6           of applicant they're getting and what kind of resident  
7           they're getting.

8           Q. Okay. So, just so I'm certain, the first time  
9           that a summative evaluation was created for Dr. Weisman  
10          from Washington University was after September of 2021?

11          MR. SULLIVAN: Object to form.  
12          Mischaracterizes his testimony.

13          Go ahead and answer.

14          A. I believe that that date matches, yes.

15          Q. (By Mr. Elster) Okay. Do you consider it a  
16          mistake that there wasn't one created before that time  
17          period?

18          MR. SULLIVAN: Object.

19          A. No, we didn't know the requirement.

20          Q. (By Mr. Elster) Okay.

21          A. And again, we don't usually have residents  
22          leave so it's an unusual circumstance.

23          Q. Okay. Separate from your not knowing the  
24          requirement, was it in compliance with ACGME  
25          guidelines?

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1           A. It's hard to be in compliance with guidelines  
2 if you don't know what the guidelines are.

3           Q. But aren't -- isn't Wash U. an ACGME an  
4 accredited institute?

5           A. Sure.

6           Q. Okay.

7           A. That doesn't mean that every single  
8 requirement that the ACGME puts forth is met.

9           Q. Okay.

10          A. That's why they have reviews.

11          Q. So you think because you didn't know of the  
12 specific requirement, it doesn't?

13          A. No, that's not what I said.

14          Q. Okay.

15          A. I said that the ACGME puts forth a lot of  
16 rules and regulations. Just because your infraction of  
17 one rule or regulation doesn't mean that you're not  
18 going to be in compliance with the overall gestalt that  
19 the ACGME is submitting, right? So if I have a  
20 resident that breaks an IDL work week, that doesn't  
21 mean that the ACGME is going to come down and say, oh,  
22 you're no longer ACGME certified.

23          Q. And I'm not saying that they're going to pull  
24 the certification based on that.

25          A. Okay.

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1 Q. But do you agree with me that as you  
2 understand it now that the failure to create a  
3 summative evaluation before September of 2021 was a  
4 violation of the --

5 A. -- As I understand it now, yes.

6 Q. It was a violation?

7 A. Yes.

8 Q. Okay. You mentioned Tia Drake would have been  
9 notified of that or communicated with someone at the  
10 ACGME about that?

11 A. I believe that there was an ombudsman or a  
12 lawyer or both from the ACGME that contacted Tia Drake,  
13 yes.

14 Q. Do have an understanding of how this came on  
15 their radar?

16 A. Because there was allegations that the program  
17 was not being responsive to Dr. Weisman's request for  
18 documentation.

19 Q. Was it common for you as when you were the  
20 program director to communicate your opinions about  
21 residents to other medical institutes?

22 MR. SULLIVAN: I'm going to object -- let  
23 me -- just let me -- give me the time to insert  
24 objections. Sometimes it's just -- just object. It  
25 calls for speculation.

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1                   Go ahead and answer.

2           A.   If your question is was it common, no, it's  
3 not common.

4           Q.   (By Mr. Elster) Did it happen?

5           A.   Yes, it happened.

6           Q.   In what types of instances?

7           A.   Well, specifically with Dr. Weisman it  
8 happened. I don't -- I don't recall an instance like  
9 that as a program director. Certainly I fielded  
10 inquiries from, you know, fellowship programs that were  
11 asking about residents and whether they would, you  
12 know, be good trainees as a fellow. I probably  
13 entertained communications about, you know, whether or  
14 not a resident would be a good employee in a practice  
15 but I don't recall specific details.

16          Q.   Okay. Do you believe that when you're  
17 expressing your opinion and when you were the program  
18 director that was -- that carried weight and was  
19 valuable?

20               MR. SULLIVAN: Object to form. Calls for  
21 speculation.

22               Go ahead and answer.

23          A.   I don't know whether it carries weight or not.

24          Q.   (By Mr. Elster) Okay. If you were  
25 communicating with another program director when you

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1 were program director and they gave a negative opinion  
2 about a resident transferring in, would that be  
3 important to you?

4 MR. SULLIVAN: I'm going to object. Improper  
5 hypothetical.

6 Go ahead and answer.

7 A. I think it's unlikely. So I don't -- I don't  
8 recall any specific instances where I called a  
9 resident -- another residency program director  
10 inquiring about a resident. But I think it would be  
11 unlikely for a residency program not to try to color a  
12 resident in the most positive light possible.

13 Q. (By Mr. Elster) You're saying it's unlikely  
14 that that would happen?

15 A. Yeah.

16 Q. Okay. If -- if another residency program  
17 director communicated to you there were significant red  
18 flags around a resident, would you take that resident  
19 transfer?

20 MR. SULLIVAN: Object to form. Calls for  
21 speculation. Improper hypothetical.

22 Go ahead and answer.

23 A. It depends on what their concerns were.

24 Q. (By Mr. Elster) Okay. If that's all they  
25 said was red flags.

1           A. It would be unlikely that they would leave the  
2 conversation like that.

3           Q. Well, what if they did, how would you -- what  
4 would you do?

5           A. If they told me that there was red flags, I  
6 would be concerned. Sure.

7           Q. Okay. Why?

8           A. Well, I mean, for one, I would want to know  
9 what the red flags are. For two, you worry about  
10 whether or not the resident's going to be able to  
11 complete training.

12          Q. It would call into question the resident's  
13 competence and capabilities?

14               MR. SULLIVAN: Object to form. Calls for  
15 speculation.

16               Go ahead and answer.

17          A. So for me it just -- it calls into question  
18 whether or not they're going to be able to complete the  
19 training of the program.

20          Q. (By Mr. Elster) What if a residency director  
21 told you just say no with respect to a resident?

22               MR. SULLIVAN: Object to form. Calls for  
23 speculation. Improper hypothetical.

24               Go ahead and answer.

25          A. It would be very unlikely for another



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1 residency program director to say that.

2 Q. (By Mr. Elster) Okay. And I'm asking if that  
3 happened, would you take that resident?

4 A. It depends.

5 Q. Okay. If that's all they said, just say no?

6 A. Again, in real life it's unlikely that that  
7 would happen. If it did, it would depend.

8 Q. Okay. Do you know if Dr. Evers said that to  
9 someone at Yale about Dr. Weisman?

10 A. I have no idea what Dr. Evers said.

11 Q. Okay. Similarly, if a residency director  
12 communicates to you about a perspective transferring  
13 resident, read between the lines, that's all they said,  
14 how would you interpret that?

15 MR. SULLIVAN: I'm going to object to form.  
16 Improper hypothetical. Calls for speculation.

17 Go ahead and answer.

18 A. So as the residency program director, I do not  
19 recall any instances where I received a call from  
20 another program director telling me about a resident  
21 that wanted to transfer into the program.

22 Q. (By Mr. Elster) And you told me that. But  
23 I'm saying what would have been your reaction if you  
24 were the program director and another program director  
25 communicated to you, quote, read between the lines?

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1 MR. SULLIVAN: Same --

2 Q. (By Mr. Elster) -- About this resident?

3 MR. SULLIVAN: Same objection.

4 Go ahead and answer.

5 A. Again, it would depend on what the concerns  
6 are.

7 Q. (By Mr. Elster) And if there was nothing more  
8 voiced beyond that?

9 A. If there was nothing more voiced beyond that,  
10 then yeah, I would have trepidations about accepting  
11 the resident.

12 Q. What is diversion in the anesthesiology  
13 context?

14 A. Diversion usually refers to taking drugs away  
15 from their intended purpose, which is usually given to  
16 a patient, and using it for personal use.

17 Q. To your understanding is that a problem in the  
18 practice of anesthesiology?

19 A. Yeah. Yes.

20 Q. Okay. Why do you say yes?

21 A. Because I think that's fairly well known.

22 Q. If there was a suggestion that a potential  
23 resident -- I guess it would be called diverting -- was  
24 diverting drugs, would you take that potential  
25 perspective resident as you were the program director?

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1 MR. SULLIVAN: I'm going to object to form.  
2 Calls for speculation and improper hypothetical.

3 Go ahead and answer.

4 A. If -- is your question if I had information or  
5 was led to believe that there was a resident diverting  
6 drugs, would I have concerns about accepting the  
7 resident?

8 Q. (By Mr. Elster) Right.

9 A. Yes.

10 Q. Is there a situation when you would accept  
11 such a resident if you were certain about him diverting  
12 drugs or her?

13 MR. SULLIVAN: Objection. Calls for  
14 speculation. Improper hypothetical.

15 Go ahead and answer.

16 A. It would depend. So, you know, there are  
17 residents that are successfully rehabilitated from  
18 illicit drug use. Unfortunately, our discipline has a  
19 high rate of recidivism. So it would depend on the  
20 particulars.

21 Q. (By Mr. Elster) Do you know who Dr. Alan Kaye  
22 is?

23 A. I know the name. I don't believe I've ever  
24 met Dr. Kaye. I don't know him personally.

25 Q. Have you ever spoken to him?

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1           A. I don't believe I've ever spoken to Dr. Kaye,  
2 no.

3           Q. Okay. Have you ever communicated with him in  
4 writing?

5           A. I have e-mailed him, yes.

6           Q. What do you remember about those?

7           A. I believe I forwarded a letter of  
8 recommendation on behalf of Dr. Weisman. I may have  
9 forwarded something else as well.

10          Q. What's the something else?

11          A. I don't recall. I might have forwarded a  
12 rotation schedule but I don't recall.

13          Q. Outside of those communications, any other  
14 interactions with Dr. Kaye?

15          A. I don't believe so.

16          Q. Do you know anything about his background?

17          A. I believe he is the chair of the department  
18 but, no, I don't know anything about his background.

19          Q. Okay. Are you familiar that's he's written an  
20 expert report in this case?

21          A. In what case?

22          Q. In this particular -- this case that we're  
23 here on today for your deposition.

24          A. No, did not know that.

25          Q. Okay. So you don't know if he gave a number

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1 of -- you don't know whether or not he gave a number of  
2 opinions in an expert report?

3 A. No.

4 Q. Okay. I want to ask you about some of his  
5 opinions. He gave an opinion that anesthesiologists  
6 approximately make around the United States half a  
7 million dollars, \$750,000 as a board certified  
8 anesthesiologist. Do you agree with that opinion?

9 A. That seems a little high.

10 Q. What range would you give?

11 A. So it depends. There's a difference in pay  
12 scale if you're an academic, such as myself, or if  
13 you're in what we call private practice. If you're in  
14 private practice, that pay range might be more  
15 realistic. But if you're in academics, I would --  
16 without knowing particulars, I would guess you'd be  
17 more in the range of 250- to 400,000. Unless maybe if  
18 you're in a position like a chair, maybe that would be  
19 half a million.

20 Q. Private practice, do you have an opinion on  
21 what a pay range would be?

22 A. It might be similar to what Dr. Kaye is  
23 saying, 500- to 750-.

24 Q. So you would agree with his opinion as to the  
25 range of compensation as it relates to private

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1 practice?

2 A. Without knowing particulars if you're asking  
3 my opinion?

4 Q. Right.

5 A. That sounds about right, yes.

6 Q. Okay. But less if there was an academic --  
7 academic settings make less?

8 A. Correct.

9 Q. Okay. Do you know what Strategic Biomedical,  
10 Inc., is?

11 A. No.

12 Q. Do you know if that was a lab that Jeff -- Dr.  
13 Weisman operated while at Washington University?

14 A. I don't know what it is so I don't know.

15 Q. Have you ever heard of that before?

16 A. I have not.

17 Q. Do you know if he ever had a lab?

18 A. I know he had a lab, yes.

19 Q. And what do you know about that?

20 A. So as the program director I don't think I  
21 knew anything about it. But subsequently I believe it  
22 was a lab that had to do with 3D printing.

23 Q. How did you come to that understanding?

24 A. Some of the documents that I was given to  
25 review.

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1 Q. Outside of reading those documents did you  
2 have any other way of knowing that?

3 A. Outside of those documents, no, I don't  
4 believe so.

5 Q. Okay. Dr. Kaye gave an additional opinion. I  
6 want to read it to you. It says, quote, My overall  
7 opinion in this matter is that it was unreasonable for  
8 the program -- referring to Washington University -- to  
9 expect Dr. Weisman to perform all of his obligations as  
10 a resident physician of training while simultaneously  
11 running and operating his lab, close quote. Do you  
12 agree with his opinion?

13 MR. SULLIVAN: Object to form.

14 Go ahead and answer.

15 A. The way I interpret that statement is that  
16 it's his opinion that we would ask someone to run a lab  
17 and to complete clinical training. So if his statement  
18 is speaking to, you know, having a lot of demands on  
19 your time, I can see that being factual.

20 Q. (By Mr. Elster) So if it's -- what do you  
21 mean you can see that being factual? I don't follow  
22 you.

23 A. Well, I guess what I'm trying to say is that  
24 as a residency program director we would not require  
25 someone to run a lab. It wouldn't be -- it wouldn't be

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1 something that we would recommend, for someone to run a  
2 lab and try to complete a residency training program.  
3 Just like we wouldn't advocate for somebody to have a  
4 second job and try to complete a residency training  
5 program.

6 Q. If someone is operating a research lab do you  
7 think that the department had any responsibilities to  
8 accommodate that?

9 MR. SULLIVAN: Object to form. Calls for  
10 speculation.

11 Go ahead and answer.

12 A. I believe the residency program's obligation  
13 is to try to produce a clinically competent  
14 anesthesiologist when they're done with their training.  
15 Anything that interferes with that should be taken into  
16 consideration.

17 Q. (By Mr. Elster) To what extent to be taken  
18 into consideration?

19 A. So if you're asking for my opinion.

20 Q. Yeah.

21 A. It would be that you need to focus on your  
22 clinical training and put aside other considerations.

23 Q. Dr. Kaye also gave an opinion, quote, Dr.  
24 Weisman's research experience, expertise, and his M.D.  
25 slash Ph.D. status, makes him a highly competitive



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1 candidate to all residency training programs, close  
2 quote. Do you agree with that?

3 A. Can you read that again?

4 Q. Quote, Dr. Weisman's research experience,  
5 expertise, and his M.D. slash Ph.D. status makes him a  
6 highly competitive candidate to all residency training  
7 programs, close quote.

8 A. So are you asking me to answer that question  
9 with the knowledge that I have about Dr. Weisman's  
10 clinical performance?

11 Q. So I'll ask that subsequently to that.

12 So do you agree with just that statement  
13 specifically?

14 A. No, not necessarily.

15 Q. Okay. Why not necessarily?

16 A. Because there's other things that you should  
17 take into consideration besides someone's academic  
18 pedigree.

19 Q. Do you think his academic -- academic pedigree  
20 just in and of itself makes him a highly competitive  
21 candidate?

22 A. Not necessarily.

23 Q. In the case of Dr. Weisman do you think that  
24 his academic pedigree -- pedigree is an asset in terms  
25 of being -- going into another residency training

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1 program?

2 A. It depends on what kind of training he's  
3 trying to complete.

4 Q. Another anesthesiology program?

5 A. Does his academic pedigree mean that he's well  
6 qualified to go into another anesthesiology program?

7 Q. Correct.

8 A. No, I don't agree with that.

9 Q. Does that make him a highly competitive  
10 candidate?

11 A. If all I knew about somebody was their  
12 degrees?

13 Q. Correct.

14 A. Does that mean that they're going to be a  
15 well-qualified anesthesiologist or a competitive  
16 applicant?

17 Q. Correct.

18 A. No.

19 Q. That's the question.

20 A. No.

21 Q. What else -- what else do you need?

22 A. So other things that I would want to look at  
23 is where were the degrees completed. What was his  
24 clinical performance while he was in medical school.  
25 Some of those things we can get from the dean's letter.

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1 If he did away rotations, how did he do on those  
2 rotations. And if he did -- he or she did an  
3 anesthesia rotation, how did they do on that rotation?

4 Q. Dr. Kaye gave a number of further opinions.  
5 Before we take a break I want to ask you about one more  
6 of them.

7 Quote, An ACGME's accredited program's purpose  
8 and their duty is to provide training and fair learning  
9 opportunities to its resident physicians, close quote.

10 A. Can you read it one more time?

11 Q. "An ACGME accredited program's purpose and  
12 their duty is to provide training and fair learning  
13 opportunities to its resident professions."

14 A. I agree with that.

15 Q. Close quote.

16 A. I agree with that.

17 Q. Do you know if that happened with Dr. Weisman?

18 A. Well, you're -- excuse me. You're asking me  
19 to assume the perspective of Dr. Weisman, which is  
20 impossible for me to do. I can't speak to whether or  
21 not he felt his experience was fair or not.

22 Q. Okay. Well, I'm asking you do you feel his  
23 experience was fair?

24 A. To my knowledge, yes.

25 Q. Okay. Based on any of your personal

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1 interactions, do you know?

2 A. Based on my personal interactions with who?

3 Q. With Dr. Weisman while he was a resident.

4 MR. SULLIVAN: Object to form. Vague,  
5 confusing.

6 Go ahead and answer.

7 A. I -- I don't recall any conversations with Dr.  
8 Weisman where he would have led me to believe  
9 otherwise, that he didn't feel like he was being  
10 treated fairly.

11 Q. (By Mr. Elster) How many times have you  
12 spoken to him that you can recall?

13 A. Probably on the order of 10 times.

14 Q. Okay. No more than that though over the  
15 course of all these years?

16 A. Well, you're asking about things that took  
17 place four or five years ago. So it's a conjecture on  
18 my part. I don't recall specifically but on the order  
19 of 10.

20 MR. ELSTER: Okay. Let's take a break here.

21 VIDEOGRAPHER: We're off the record at 10:21  
22 a.m.

23 (Short break.)

24 VIDEOGRAPHER: Go back on the record at 10:45  
25 a.m.

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1 Q. (By Mr. Elster) The next opinion from  
2 Dr. Kaye I want to ask you about, Dr. Thompson, I'll  
3 quote it. So begin quote, At an ACGME accredited  
4 residency training program the evaluation process  
5 should be objective and should not be motivated by  
6 harassment, retaliation, or performed in an effort to  
7 pressure a resident physician to resign, close quote.  
8 Do you agree with that opinion?

9 A. I agree that the evaluations should be done  
10 without harassment or trying to pressure someone to  
11 resign. I believe that's correct. The question about  
12 objectivity though I think is more difficult. So....

13 Q. What makes it more difficult?

14 A. Well, so, for example, if you, you know,  
15 outside of medicine, if you had 10 different  
16 individuals witness some particular event then asked  
17 them to recall the event, you might have 10 different  
18 recollections of how that went down. And I think that  
19 there are parallels to observing someone's clinical  
20 performance.

21 You know, in the case of anesthesiology, I  
22 could watch a resident do an incredibly simple case and  
23 think that -- for that particular case for that  
24 particular patient they did fine. But on a different  
25 day if I'm supervising a resident doing a more complex

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1 case, I might feel very differently. That they're  
2 performance is subpar.

3 Q. Are there any objective components to the  
4 evaluation process?

5 A. There are things that can be objective, sure.

6 Q. Like what?

7 A. Well, so for example, if you wanted to  
8 evaluate a resident's ability to intubate a patient,  
9 place a breathing tube, you know, the objective  
10 criteria you might use is did they get it in the right  
11 place or not. But that ignores, you know, how they  
12 accomplish that, right? Because you can also knock out  
13 somebody's tooth while trying to place the breathing  
14 tube, and I think that also needs to be taken into  
15 consideration when you evaluate someone.

16 Q. Do you think that the evaluation process is  
17 more subjective or objective?

18 A. You're asking me to weigh objectivity versus  
19 subjectivity. I don't know how I would do that.

20 Q. You don't have a belief one way or the other  
21 as to gauge a resident's progress?

22 A. I think both subjective criteria and objective  
23 criteria fit into the -- into the evaluation process.

24 Q. So you would disagree with Dr. Kaye's opinion  
25 that the evaluation process should be -- should be

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1 objective?

2 A. Yeah, I think I would disagree with that.

3 Q. You're saying that in part -- in part because  
4 you're saying it should be partially be subjective?

5 A. Well, I think in -- in reality part of it is  
6 subjective, yes.

7 Q. Dr. Kaye also gave an opinion that, quote, It  
8 was also a violation of industry standards in ACGME  
9 procedures to refuse to show Dr. Weisman his evaluation  
10 scores, close quote.

11 MR. SULLIVAN: Going to object to form. Lacks  
12 foundation.

13 Go ahead and answer.

14 A. To my knowledge Dr. Weisman had access to his  
15 files so I'm not sure what that's in reference to.

16 Q. (By Mr. Elster) Okay. Do you believe that  
17 Dr. Weisman should have had that access to his  
18 evaluation scores?

19 A. Yes, he should have had access to evaluation  
20 scores.

21 Q. At what periods of time?

22 A. While he was there as a resident?

23 Q. At all periods of time while he was a  
24 resident?

25 A. He should have had access to it, yes.

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1 Q. If he did not have access to his evaluation  
2 scores, do you think that would have been a violation  
3 of ACGME procedures?

4 MR. SULLIVAN: I'm going to object to form. It  
5 assumes facts not in evidence. It's contrary to the  
6 facts in evidence. Calls for speculation.

7 Go ahead and answer.

8 A. Am I supposed to answer it?

9 MR. SULLIVAN: Yeah.

10 A. Sorry. Can you repeat the question? If he  
11 had not had access?

12 Q. (By Mr. Elster) If he did not have access,  
13 would that have been a violation?

14 A. If that is in fact true, yeah, I think that  
15 would probably be a violation.

16 (Discussion held off the record.)

17 Q. (By Mr. Elster) Are you familiar with --  
18 generally with the consortium between Washington  
19 University and Barnes Jewish Hospital?

20 A. I don't know the specifics. But, yeah, I know  
21 there's a consortium.

22 Q. Not necessarily the bylaws. Okay.

23 Likewise, if Dr. Weisman didn't have access to  
24 his evaluations and how they were scored, would it be a  
25 violation of those consortium policies?



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1 MR. SULLIVAN: And I'll object to the  
2 question. Assumes facts not in evidence. Contrary to  
3 the facts in evidence. Calls for speculation.

4 Go ahead and answer.

5 A. I'm not sure how that would be pertinent to  
6 the consortium but I don't know one way or another.

7 Q. (By Mr. Elster) Would it have violated any  
8 Washington University policies?

9 MR. SULLIVAN: Same objection.

10 Go ahead and answer.

11 A. I -- I don't know.

12 Q. (By Mr. Elster) Okay. Isn't it important  
13 that a resident has access to his or her training  
14 scores --

15 A. -- Yes.

16 Q. Why?

17 A. So they know how they're doing in the program.

18 Q. Okay. And if they don't have access to that,  
19 would that be problematic?

20 A. I believe that would be problematic, yes.

21 Q. In what way?

22 A. Well, other than my belief that it's an ACGME  
23 requirement that they be able to access their files,  
24 you wouldn't want to be in a situation where the  
25 resident is somehow surprised or taken back by what

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1 their evaluations are.

2 Q. Okay. Have you ever refused to release any of  
3 Dr. Weisman's files from Washington University to  
4 any -- to him?

5 MR. SULLIVAN: Going to object to form.  
6 Vague.

7 Go ahead and answer.

8 A. Have I ever refused? I'm sorry, what was the  
9 question?

10 Q. (By Mr. Elster) Have you ever refused to  
11 release Dr. Weisman's files or records from his time as  
12 an anesthesiology resident at Washington University to  
13 him?

14 MR. SULLIVAN: Same objection.

15 Go ahead and answer.

16 A. There was supposedly a request from somebody  
17 to copy or fax his entire file, which I didn't feel was  
18 a good use of resources so I did refuse that request.

19 Q. (By Mr. Elster) And I'll ask about that next.  
20 But the first question was to him. Did you ever refuse  
21 to release it to him?

22 A. Did I ever refuse to release files to him?  
23 Not to my knowledge, no.

24 Q. What are you referring to that it wasn't a  
25 good use of resources not to release it to somebody

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1 else?

2 A. Well, I mean, his file is probably thicker  
3 than that file there, so it's just not a good use of  
4 admin resources to fax or copy an entire file to that.  
5 There's no utility to that. If there's specific things  
6 that, you know, are being asked about, so for example  
7 milestones or, you know, a list of rotations that he  
8 had taken or, you know, meeting notes, I think that's  
9 reasonable. But to come up with a blanket request that  
10 I ask somebody to photocopy 200 pages doesn't seem like  
11 a good resource allocation.

12 Q. Who was it that requested the file that you're  
13 referring to?

14 A. I believe it was Dr. Patil, P-a-t-i-l. I  
15 believe. But I could be wrong.

16 Q. And you thought it was onerous to copy 200  
17 pages?

18 A. I thought it was onerous to ask one of our  
19 admins to do that, yes.

20 Q. How long would that have taken?

21 A. I don't know. I didn't ask her to do it.

22 Q. Have you ever copied paper before?

23 A. Not 200 pages.

24 Q. Okay. You don't -- you don't think it would  
25 take less than 10 minutes to do that?

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1           A. I don't think it would take less than 10  
2 minutes, no.

3           Q. Okay. So you refused to release the  
4 transcript to Dr. -- or his file to Dr. Patil because  
5 it was too much of a time commitment to copy it; is  
6 that right?

7           MR. SULLIVAN: I'm going to object.  
8 Go ahead and answer.

9           A. Correct.

10          Q. (By Mr. Elster) Okay. You didn't feel that  
11 you had an obligation to release his file to Dr. Patil  
12 when asked?

13          A. I didn't feel the request was reasonable.

14          Q. Well, so what would have been reasonable?  
15 Correct me if I'm wrong, if certain portions were  
16 copied?

17          A. If there was a specific question that was  
18 being put to the program that I could answer by  
19 submitting documents, I would have been happy to do  
20 that. But a blanket request to photocopy an entire  
21 file doesn't seem reasonable nor am I sure what that  
22 would have accomplished.

23          Q. Okay.

24          A. Also, I seriously doubt that anyone would have  
25 read through an entire file of -- consisting of 200

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1 pages or more.

2 Q. Are you just guessing at that though?

3 A. I'm guessing at that, yeah.

4 Q. So as an alternative you wanted to selectively  
5 produce some of the 200 pages?

6 MR. SULLIVAN: I'm going to object to form.  
7 Mischaracterizes his testimony.

8 Go ahead and answer.

9 A. I don't believe there was any subsequent  
10 request for specific documents.

11 Q. (By Mr. Elster) Okay. But if they had  
12 requested specific documents would you have told  
13 someone in admin to go through and pluck out those  
14 specific documents?

15 A. Yeah, if it was a reasonable request, sure.

16 Q. Okay. So you thought it was less burdensome  
17 to have someone go through and selectively pick certain  
18 things as opposed to just copy 200 pages; is that --

19 A. -- Well, a lot of the documents are  
20 electronically filed so I don't think it would have  
21 been that onerous to search for whatever documents  
22 might have been requested.

23 Q. Okay. Did you communicate to Dr. Patil that  
24 you weren't going to release the records because it was  
25 too much of an administrative burden?

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1           A. No. I believe I communicated that with Dr.  
2 Weisman though. I don't believe I communicated that  
3 with Dr. Patil.

4           Q. When did you communicate that to Dr. Weisman?

5           A. I don't recall specifically. It was probably  
6 sometime after I got the request.

7           Q. And after you had made the decision it was too  
8 much of an administrative burden?

9           A. Yes.

10          Q. Was it your decision alone that it was too  
11 much of an administrative burden to copy 200 pages?

12          A. Assuming that I was the program director at  
13 the time, yeah, it would have been my decision.

14          Q. Were you not the program director at the time?

15          A. I don't remember when the request was made.

16          Q. You talked to Dr. Patil at around that time  
17 period. What did you communicate to Dr. Patil?

18          A. I don't believe I spoke with her. I  
19 communicated with her.

20          Q. What did you communicate?

21          A. What did I communicate?

22          Q. Correct.

23          A. I believe I had a request from Dr. Weisman to  
24 send her documents, particular documents. One of them  
25 might have been a letter and it might have been a

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1 rotation schedule. I don't recall the specifics. I  
2 did try to fulfill that request. When I sent her the  
3 e-mail, it bounced back immediately. And I don't  
4 remember any further communication after that.

5 Q. So you tried to send a rotation schedule or?

6 A. I don't remember the particulars of what I  
7 sent her. I do know that I sent her some documents but  
8 I don't know if they ever reached her because, again,  
9 the e-mail that I sent bounced back.

10 Q. Why did you pick the documents that you  
11 sent -- sent out?

12 A. Presumably because that's what I was requested  
13 to send.

14 Q. But you do remember that you were requested to  
15 send the entire file from Dr. Patil?

16 A. I remember receiving that request from Dr.  
17 Weisman, yes, not from Dr. Patil.

18 Q. So Dr. Weisman requested the entire file?

19 A. I believe that is correct, yes.

20 Q. And that's -- you refused to give it to him  
21 because it was too much of a burden?

22 A. Correct.

23 There was nothing precluding Dr. Weisman from  
24 making a copy of it himself had he come to the office.

25 Q. Did you ever offer to scan it for him?

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1           A. I don't believe we offered to scan it for him,  
2 no.

3           Q. Did you ever offer to put it on a thumb drive  
4 for him?

5           A. No.

6           Q. Okay. Isn't there a lot of paperwork  
7 associated with medical treatment and care?

8           A. There's a lot of electronic records that are  
9 associated with medical treatment and care, yes.

10          Q. Was there not an electronic record of these  
11 documents, the 200 pages?

12          A. I don't believe his entire file would be  
13 electronic, no. We don't routinely put things like  
14 medical school, applications, or test scores  
15 electronically. But that stuff would probably have a  
16 paper copy in the file.

17          Q. Okay. Did you just not want to assist him in  
18 making it or you didn't -- you didn't feel any --  
19 anything compelling you to assist him by making a copy  
20 of 200 pages?

21                 MR. SULLIVAN: I'm going to object.  
22 Argumentative.

23                 Go ahead and answer.

24          A. I didn't see the utility to the request.

25          Q. (By Mr. Elster) From your perspective



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1 utility?

2 A. From my perspective as a program director,  
3 correct.

4 Q. What about the utility to Dr. Weisman,  
5 wouldn't that have been useful to him?

6 A. I don't know. I didn't know what the nature  
7 of the request was.

8 Q. Didn't -- didn't you think that -- you didn't  
9 know that he was trying to get into other residency  
10 programs?

11 A. I knew he was applying for an occupational  
12 health residency but I'm not sure when I became aware  
13 of that.

14 Q. How did you know that?

15 A. I think I first became aware of that because  
16 the ERAS System notified me that a letter that had been  
17 written on his behalf was being sent to a residency  
18 program.

19 Q. So the -- is the ERAS System, that's  
20 essentially -- it's for residency applications?

21 A. Correct. If they're going through the match,  
22 correct.

23 Q. Okay. And you received a notification that he  
24 was attempting to get into other residency programs; is  
25 that right?

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1 A. Correct.

2 Q. Do you know which one it was?

3 A. Which specific program?

4 Q. Right.

5 A. No.

6 Q. You just knew generally he was trying to get  
7 into programs?

8 A. Correct. But if my memory is correct I  
9 believe it was an occupational health residency  
10 program. But where, I don't -- I don't know that I  
11 knew that.

12 Q. So would it be a fair statement at the time  
13 you declined to provide a copy of the file to him you  
14 knew he was trying to get into other residency training  
15 programs?

16 MR. SULLIVAN: Object to form.  
17 Mischaracterizes his testimony.

18 Go ahead and answer.

19 A. I don't recall the temporal relation between  
20 those two events. So in other words, I don't recall  
21 when that request was made in relation to when I  
22 discovered he was applying for other residency  
23 programs.

24 Q. (By Mr. Elster) You would have gotten an  
25 e-mail from the ERAS System saying he was looking --

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1 indicating that he was looking because there was a  
2 recommendation letter?

3 A. The notification from ERAS was that he was  
4 using a letter that I believe either I or Dr. Benzinger  
5 wrote for him and that letter was being sent to other  
6 programs.

7 Q. Okay. So it only notifies you when the letter  
8 from the department is utilized?

9 A. I think it only notifies us if there's a  
10 letter that's submitted to a -- ERAS that's being used.  
11 So in other words, if he had a letter written outside  
12 of that system and he was using it, I don't know that  
13 I'd be notified.

14 Q. Okay. Do you recall when the communications  
15 with Dr. Patil occurred?

16 A. I don't.

17 Q. And there was -- none of it was by telephone;  
18 is that right?

19 A. I don't believe I ever spoke with Dr. Patil by  
20 phone, no.

21 Q. Okay. Has anyone else other than Dr. Weisman  
22 requested a copy of his or her file from Washington  
23 University?

24 MR. SULLIVAN: Object to form. Vague.  
25 Go ahead and answer if you can.

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1           A. So is your question has anyone ever reached  
2 out to me directly other than Dr. Weisman?

3           Q. (By Mr. Elster) Right.

4           A. I don't remember.

5           Q. Do you know of anyone else reaching out to  
6 someone other than you for a copy of the residency file  
7 from Washington University?

8           A. Say that again.

9           Q. We talked before about how Dr. Weisman asked  
10 you for a copy of the -- his training records.

11          A. Uh-huh.

12          Q. Has anyone other than Dr. Weisman made such a  
13 request, not necessarily to you but that you're aware  
14 of?

15               MR. SULLIVAN: Object to form. Assumes facts  
16 not in evidence.

17               Go ahead and answer.

18          A. The requests that I recall for his file came  
19 from Dr. Weisman. I don't recall a third party  
20 directly asking me.

21          Q. (By Mr. Elster) And my question was a little  
22 different. My question was has any other resident made  
23 a request like Dr. Weisman did?

24          A. I understand. Sorry.

25               While I was the program director. The most

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1 common request that I get would be for a training  
2 verification, which is usually a condition of  
3 employment.

4 Q. What's a training verification?

5 A. It's pretty self-explanatory. It's just  
6 asking the residency program director to verify that  
7 that particular program attended the residency program  
8 and that they completed the program.

9 Q. Okay. Would there ever have been a training  
10 verification for Dr. Weisman?

11 A. I believe there was something along those  
12 lines. I'm not sure if it was a residency -- I'm not  
13 sure if it was a training verification program but it  
14 was something like that.

15 Q. Okay. Do you know if you would have sent that  
16 to Dr. Patil?

17 A. I don't believe I sent that to Dr. Patil,  
18 no.

19 Q. You said it's a condition of employment; is  
20 that right?

21 A. The residency training verification, yes, is a  
22 condition of employment.

23 Q. Why?

24 A. Well, because as an employer you want to know  
25 that the person completed their residency program

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1 before you employ them.

2 Q. Okay. Would that have been -- the training  
3 verification, or whatever it was for Dr. Weisman, would  
4 that have been a component of his 200 pages or so file  
5 that you declined to copy?

6 MR. SULLIVAN: Object to form.

7 Go ahead and answer.

8 A. No, it wouldn't have been part of his file.  
9 The same way that a training verification form wouldn't  
10 be part of a resident's file that completed training  
11 there. Those requests come from whoever the employer  
12 is to the program. So it's not a preexisting form that  
13 we would have.

14 Q. (By Mr. Elster) Something created in  
15 response?

16 A. Correct.

17 Q. Did you ever condition the release of Dr.  
18 Weisman's training file -- and I'm referring -- is that  
19 the correct terminology for the 200 pages we're talking  
20 about, training file, just so we're talking about the  
21 same?

22 A. It's as good as anything I can think of.

23 Q. Did you ever condition that on him signing a  
24 release of liability?

25 MR. SULLIVAN: I'll object.

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1 A. No.

2 MR. SULLIVAN: Calls for a legal conclusion.  
3 Go ahead and answer.

4 A. No. There was a request for a letter of  
5 recommendation for Dr. Weisman that I had asked for --  
6 for his signature stating something along the lines  
7 that he hadn't looked at the letter. But there was  
8 never any conditionality.

9 Q. (By Mr. Elster) Did you ever ask Dr. Weisman  
10 to sign a release of liability for you and Washington  
11 University?

12 A. I don't believe so, no.

13 Q. Do you think that's something you would have  
14 ever done?

15 A. A release of liability. Unless it's in the  
16 context of the letter of recommendation that I just  
17 referenced, no, I don't think we would have ever asked  
18 him to sign something like that.

19 Q. As program director do you think it would have  
20 been appropriate for you to condition the release of  
21 his training file on him signing a release of  
22 liability?

23 MR. SULLIVAN: I'm going to object to form.  
24 Assumes facts not in evidence. Contrary to the facts  
25 in evidence.

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1                   Go ahead and answer.

2           A.   Would I have asked for him to sign a release  
3 of liability before releasing records. Is that your  
4 question?

5           Q.   (By Mr. Elster) Correct.

6           A.   No, I don't believe so.

7           Q.   What about a release of records to any third  
8 parties?

9           MR. SULLIVAN: Same objection.

10          Go ahead.

11          A.   A release of records to any third parties. I  
12 don't believe so.

13          Q.   (By Mr. Elster) Jump around to Exhibit 20.

14          MR. ELSTER: I have copies for everyone too.

15          MR. SULLIVAN: Okay.

16          MS. RUTTER: You said Exhibit 20, Henry?

17          MR. ELSTER: Yeah, Exhibit 20.

18          And I think the Bates label is 59188. I  
19 guess -- I don't think it's consecutive. That's the  
20 first one. Mark this Exhibit 20.

21          Q.   (By Mr. Elster) What is Exhibit 20, Dr.  
22 Thompson?

23          A.   It looks like an e-mail.

24          Q.   Is this an e-mail that you sent to Dr. Weisman  
25 on November 26 of 2018?



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1 A. It would appear that way.

2 Q. Would you have been the training -- or the  
3 department?

4 A. The residency program director.

5 Q. The residency program director?

6 A. Yes.

7 Q. At that time?

8 Okay. Is your e-mail drthompson@wustl.edu?

9 A. It is.

10 Q. Do you have any other e-mail addresses?

11 A. Sure.

12 Q. What are they?

13 A. Drthompson911@yahoo.

14 Q. Anything other than that Yahoo address?

15 A. Drthomps99@gmail.

16 Q. Anything Else?

17 A. Douglasroycethompson@yahoo.

18 Q. Is that all of them? I just want to make sure  
19 I got all of your e-mails.

20 A. I think that's all of them.

21 Q. Okay. Have you ever communicated about Dr.  
22 Weisman on those e-mail addresses?

23 A. Other than the wustl account?

24 Q. Correct.

25 A. I don't believe so.

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1 Q. Have you ever text messaged about Dr. Weisman?

2 A. Have I text messaged about Dr. Weisman. I  
3 don't know.

4 Q. Would there have been any other written  
5 communications about Dr. Weisman other than text  
6 messages and e-mails?

7 A. Like letters?

8 Q. Sure.

9 A. Other than in the context of sending records,  
10 no, I don't believe so.

11 Q. Records to third parties?

12 A. Records to third parties or requests for  
13 information.

14 Q. What type of request for information?

15 A. Well, I -- I know that there was a request for  
16 me to have a telephone conversation with someone  
17 regarding him.

18 Q. Who was that person?

19 A. I believe that was Dr. Epling at Duke.

20 Q. At Duke. Okay. Did you have that telephone  
21 call?

22 A. I did not.

23 Q. Why didn't you?

24 A. That was on the advice of counsel from BJH and  
25 BJC.

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1 Q. Did you communicate to Dr. Epling that you  
2 couldn't communicate because it was on the advice of  
3 counsel?

4 A. I did.

5 Q. Okay. The first page of the e-mail, this  
6 is -- is this the e-mail from you to Dr. Weisman again?

7 A. This is an excerpt of what I believe is a  
8 longer e-mail exchange. But yes, this is an e-mail  
9 from me to Dr. Weisman.

10 Q. And there's an authorization of a release that  
11 was attached on page 2.

12 A. Uh-huh.

13 Q. Who prepared this authorization and release?

14 A. I don't know.

15 Q. Did you prepare it?

16 A. No.

17 Q. Was it provided to you by an attorney?

18 MR. SULLIVAN: I'm going to object and  
19 instruct you not to disclose any attorney-client  
20 communications. To the extent you can answer the  
21 question, you can go ahead

22 A. I have no idea who prepared this. I --  
23 yeah.

24 Q. (By Mr. Elster) Have you ever asked someone  
25 other than Dr. Weisman during your tenure at Washington

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1 University to sign an authorization and release like  
2 what we see in Exhibit 20?

3 A. Well, having never encountered a case like Dr.  
4 Weisman, no, there wouldn't have been occasion to.

5 Q. You said you never encountered a case like Dr.  
6 Weisman. Okay. What?

7 A. Someone that left the program in the way that  
8 Dr. Weisman did.

9 Q. I don't want -- was there an attorney who  
10 prepared this authorization and release?

11 MR. SULLIVAN: I'm going to again object. I  
12 think it's asked and answered. And further direct the  
13 witness not to disclose any attorney-client  
14 communications.

15 And subject to that you can answer.

16 A. I -- I don't know who prepared that.

17 Q. (By Mr. Elster) Do you know who provided it  
18 to you?

19 A. I do not out of context know who provided it  
20 to me, no.

21 Q. Would there have been people when you were in  
22 this position in 2018 who would have prepared a  
23 document like this?

24 MR. SULLIVAN: Object to form. Asked and  
25 answered.

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1 Q. (By Mr. Elster) I'm trying to narrow down who  
2 would have created this. Because if you don't the  
3 specific names, I'm like, well, who could it have been?  
4 That's what I'm trying to do.

5 A. So I do not know specific names, so I can't  
6 answer that question.

7 Q. So this is dated November of 2018?

8 A. Uh-huh.

9 Q. Where temporally did you make the  
10 determination that it was too much of an administrative  
11 burden to copy his training file?

12 A. I don't know. I would have to see that  
13 e-mail.

14 Q. Okay. You don't know if it was before or  
15 after this e-mail?

16 A. I don't know.

17 Q. Okay. Do you know if Dr. Weisman ever signed  
18 this authorization and release?

19 A. I am fairly certain he never did.

20 Q. Okay. Did you see earlier drafts of this  
21 authorization and release?

22 MR. SULLIVAN: I'm going to --

23 Q. (By Mr. Elster) -- Before this version here?

24 MR. SULLIVAN: I'm just going to object and  
25 caution the witness not to disclose any attorney-client

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1 communications, if there were.

2 Go ahead and answer.

3 A. I don't recall seeing any earlier drafts of  
4 this, if that's what you're referring to.

5 Q. (By Mr. Elster) Before it was sent?

6 A. I don't recall.

7 Q. And I don't want to talk about any  
8 communications, but is there an attorney who would --  
9 you would consult with about legal liability for  
10 residency? I just want an identity, not  
11 communications.

12 A. If you're asking if I have a legal question?

13 Q. Right.

14 A. Is there somebody that I would go to at Wash  
15 U. or BJC?

16 Q. Correct.

17 A. So I would usually direct a question like that  
18 to Christine Ramatowski or Joe Sklansky.

19 Q. Okay. With that in mind, does that make it  
20 probable that one or -- one or both of them prepared  
21 this authorization and release?

22 MR. SULLIVAN: I'm going to object. Instruct  
23 the witness not to disclose any attorney-client  
24 communications.

25 A. It's possible.

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1 Q. (By Mr. Elster) Okay. Before you sent the  
2 e-mail did you -- or immediately before you sent the  
3 e-mail, I know you don't remember if you saw earlier  
4 drafts, but did you look at the language in the  
5 release?

6 A. No.

7 Q. So you didn't know before you sent it that it  
8 was asking to release you, Washington University,  
9 Barnes-Jewish Hospital, so on and so forth from any  
10 liability?

11 MR. SULLIVAN: And I'm going to object to the  
12 form, that it mischaracterizes this authorization and  
13 release.

14 Q. (By Mr. Elster) Outside of what you said  
15 before in terms of your personal involvement, have you  
16 ever heard of Washington University asking someone to  
17 sign a release like this in connection with the release  
18 of their training file?

19 A. I don't know how I would know that.

20 Q. Because you've worked there for years and you  
21 might have some knowledge of it. I don't know.

22 A. No, I don't know how I would know that because  
23 this would be privileged and confidential. So how  
24 would I know that?

25 Q. From communicating with nonattorneys?

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1 A. No.

2 Q. Do you know if his training file was ever  
3 released, Dr. Weisman's, to him or anyone else?

4 A. If your question is was the entirety of his  
5 training file ever photocopied and sent to somebody?

6 Q. That's not my -- no. So not necessarily  
7 photocopied but released in terms of produced either as  
8 a photocopy, a scan, or made available to him?

9 A. I don't know. And this, if I remember  
10 correctly.

11 Q. Okay.

12 A. This was in reference to a letter of  
13 recommendation, not the release of his training  
14 records.

15 Q. You think that this authorization and release  
16 is in relation to his training records?

17 A. No, no, no. What I'm -- what I'm saying is  
18 despite the title of this e-mail, I believe this  
19 exchange was in relation to a letter of recommendation.

20 Q. So it's your testimony then that you were  
21 asking him to sign an authorization and release in  
22 connection with a letter of recommendation?

23 A. That is where I believe -- that is the context  
24 in which this e-mail fits in, I believe, yes.

25 Q. Do you see anything in the authorization and



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1 release about a letter of recommendation?

2 MR. SULLIVAN: Objection. I'm going object to  
3 form. Exhibit 20 speaks for itself.

4 You can take your time and read the release.

5 A. So this looks like it's in reference to a  
6 letter of recommendation and a list of rotations he  
7 completed.

8 Q. (By Mr. Elster) Where do you see a letter of  
9 recommendation?

10 A. I thought I read that. Letter of evaluation  
11 from the program director.

12 Q. A letter of evaluation is the same thing as a  
13 letter of recommendation?

14 A. Yeah, I would consider those synonymous, yes.

15 Q. Well, have you ever asked someone to sign an  
16 authorization or a release in connection with a letter  
17 of evaluation and recommendation?

18 MR. SULLIVAN: Object to form. Asked and  
19 answered.

20 Go ahead and answer.

21 A. I'm sorry. Am I supposed to answer it?

22 MR. SULLIVAN: Yeah, go ahead.

23 A. I don't believe so, no.

24 Q. (By Mr. Elster) Did you -- did you think it  
25 was -- do you think it was appropriate to ask for this

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1 release from Dr. Weisman?

2 A. I have no idea if it's appropriate or not.

3 Again, we don't often have residents leave the program.

4 And so this is -- this instance was fairly novel to me  
5 so.

6 Q. That's cool.

7 At the time you made the decision not to  
8 release the training file for Dr. Weisman because it  
9 was an administrative burden?

10 A. Uh-huh.

11 Q. Wouldn't you have known that it would have  
12 been difficult for him to get into another residency  
13 program without the training file?

14 MR. SULLIVAN: I'm going to object to form.  
15 Calls for speculation. Assumes facts not in evidence.

16 Go ahead and answer.

17 A. Do I think that not photocopying his entire  
18 record would have made it difficult to get into another  
19 residency program?

20 Q. (By Mr. Elster) I'm not saying photocopying,  
21 I'm saying releasing. If you -- releasing. So whether  
22 it be photocopying, making them available, scanning, in  
23 some way producing?

24 A. No.

25 Q. Wouldn't that have made it difficult?

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1 A. No, I don't believe so.

2 Q. Why?

3 A. Because as I said earlier, as a program  
4 director, if I'm -- if I were to evaluate someone's  
5 ability to complete a training program here at Wash U.,  
6 I'm not going to base that decision on an exhaustive  
7 review of that particular individual's entire file.

8 There are particular things that I would look  
9 for in the file. But I'm not going to review the  
10 entire file to make that decision.

11 Q. But if you ask for a portion of the file from  
12 a resident and the resident says, Oh, they won't  
13 release it to me unless I waive a lawsuit against them,  
14 that doesn't raise any problems with you?

15 MR. SULLIVAN: I'm going to object to form.  
16 Assumes facts not in evidence. Misstates Exhibit 20  
17 and is contrary to other evidence.

18 Go ahead and answer.

19 A. I'm sorry. What was the question?

20 Q. (By Mr. Elster) Okay. If a resident is  
21 trying to go to Washington University and you ask for  
22 a portion of their file, and he or she says, Well, I  
23 can't give it to you 'cause they wanted me to sign a  
24 release of liability and they said it's too much of an  
25 administrative burden, that doesn't seem like a problem

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1 to you?

2 MR. SULLIVAN: Same objection.

3 Go ahead and answer.

4 A. I would wonder why the resident doesn't just  
5 sign the liability form.

6 Q. (By Mr. Elster) And you wouldn't have -- you  
7 wouldn't be concerned about why someone's asking  
8 someone to sign a liability form?

9 A. I would --

10 MR. SULLIVAN: -- I'm going to object. Let me  
11 object. Assumes -- assumes a legal conclusion and  
12 mischaracterizes Exhibit 20.

13 Go ahead and answer.

14 A. I would be curious as to why -- why there's  
15 lawyers involved and why -- why is this convoluted.  
16 That would be my concern.

17 Q. (By Mr. Elster) Would it give you a negative  
18 impression?

19 MR. SULLIVAN: Object to form. Speculation.

20 Go ahead and answer.

21 A. I don't know. I've never -- I've never  
22 encountered that situation so I can't really answer.

23 Q. (By Mr. Elster) Okay. But I'm asking from  
24 based on your experience as a program director, would  
25 that have given you a negative impression?

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1 MR. SULLIVAN: Objection. Calls for  
2 speculation. Asked and answered.

3 Go ahead.

4 A. I don't -- I don't know what kind of  
5 conclusion I would have reached. There may be a  
6 perfectly reasonable explanation. It's just not  
7 something that I've encountered.

8 Q. (By Mr. Elster) Do you think it was ever --  
9 well, before we get into that. So you're now the Vice-  
10 Chair for Education for the Department of  
11 Anesthesiology; is that correct?

12 A. Correct.

13 Q. What does that entail?

14 A. Oversight for all of the training programs,  
15 residency fellowships, and then dotted line  
16 responsibilities for the SRNA program and APN program.

17 Q. What's the SRNA?

18 A. Student Registered Nurse Anesthetists.

19 Q. And APN?

20 A. Advanced Practice Nurses.

21 Q. Why did you transition from program director  
22 to Vice-Chair for Education?

23 A. I was promoted.

24 Q. Who previously occupied that position?

25 A. Immediately before me, no one. It was vacant.

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1 Prior to that, Dr. Tom Cox.

2 Q. Let's flip to Exhibit 2. Is Exhibit 2 e-mail  
3 communications with you and Shirley Vaughn?

4 A. Uh-huh.

5 Q. Who is she?

6 A. She is one of the admins in the education  
7 office.

8 Q. Okay. At this time were you the Director of  
9 the Anesthesiology Department?

10 A. I was the program director.

11 Q. Program director. I want to ask you about the  
12 e-mail on the top at 2:39 p.m. "Let me check with  
13 Tom." Is that Cox?

14 A. Uh-huh.

15 Q. Dr. Cox?

16 A. Dr. Cox.

17 Q. Okay. And you say: I doubt I'm the  
18 appropriate person to be writing him any letters. In  
19 relation to Dr. Weisman. Why did you say that?

20 A. Well, I wasn't his program director. And at  
21 this time I knew that there was a history with Dr.  
22 Weisman and the program.

23 Q. Do you think it was ever appropriate for you  
24 to write letters on Dr. Weisman's behalf?

25 A. What's the nature of your question? So I

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1 certainly wrote quite -- I wrote letters of  
2 recommendation on behalf of Dr. Weisman at his request.  
3 But that letter was basically adopting a letter that  
4 had been written by Dr. Benzinger. But the request was  
5 to come from the current program director. So in my  
6 role as the current program director, I used that  
7 letter.

8 Q. I'll rephrase a little bit. So you say you're  
9 not the appropriate person. Did you say that because  
10 you weren't the program director when he was a  
11 resident?

12 A. Correct.

13 Q. Did you also say that because you didn't  
14 supervise or oversee Dr. Weisman when he was a  
15 resident?

16 A. Well, so --

17 MR. SULLIVAN: -- Object to form.  
18 Mischaracterizes his prior testimony.

19 Go ahead and answer.

20 A. So as we discussed earlier, I did supervise  
21 Dr. Weisman in a clinical manner, in a clinical  
22 fashion, yes.

23 Q. (By Mr. Elster) Okay. But you can't recall  
24 how many instances other than the one you mentioned  
25 earlier at Children's, right?

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1           A. I don't recall specific instances other than  
2 the one I mentioned, no.

3           Q. Any other reasons you wrote that you weren't  
4 the appropriate person to be writing any letters?

5           A. Other than I've already listed? No, I don't  
6 think so.

7           Q. Did you meet with Dr. Weisman after these  
8 e-mails in August -- in August of 2018?

9           A. I believe I met with Dr. Weisman in my office.  
10 I don't know temporally when it occurred. Before or  
11 after this.

12          Q. What do you remember about that meeting?

13          A. Nothing really.

14          Q. Did he during that meeting or any time after  
15 ask for your assistance in transferring to another  
16 residency program?

17          A. I believe he asked for a letter of  
18 recommendation. So in that fashion, yes, I guess you  
19 could say he asked for assistance.

20          Q. Did you feel that you had any obligation to  
21 assist him in transferring to another residency  
22 program?

23               MR. SULLIVAN: Object to form. Vague.

24               Go ahead and answer.

25          A. I believe it's in the best interest of any



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1 residency program to try to ensure the success of any  
2 trainee that is in their program or left their program,  
3 yes.

4 Q. (By Mr. Elster) Did you do anything to assist  
5 Dr. Weisman in that end that you just described to  
6 ensure his success after he left the program?

7 MR. SULLIVAN: Objection. Vague.

8 Go ahead and answer.

9 A. I wrote -- again, wrote a letter of  
10 recommendation in that I borrowed or used the letter of  
11 recommendation provided by Dr. Benzinger. I sent that  
12 to multiple programs. Most of the requests that Dr.  
13 Weisman sent to the program we complied with. With the  
14 one exception that I felt it onerous to reproduce the  
15 entirety of his file.

16 Q. (By Mr. Elster) Other than the letter you  
17 said was mostly adopted from Dr. Benzinger's prior  
18 letter, did you write any other letters on Dr.  
19 Weisman's behalf?

20 A. I don't believe so.

21 Q. Okay. Did you express ever your personal  
22 views or opinions of Dr. Weisman as a resident  
23 anesthesiologist to any other medical institutes when  
24 you were department head?

25 MR. SULLIVAN: Object to department head.

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1 MR. ELSTER: Okay.

2 MR. SULLIVAN: Go ahead and answer.

3 A. I don't recall the conversation or the details  
4 of the conversation or the conversation having taken  
5 place. But I know that I did have a conversation with  
6 Dr. Macario from Stanford I believe.

7 Q. (By Mr. Elster) And you mentioned that. What  
8 do you remember about that?

9 A. I don't remember anything about it. The only  
10 reason I know that it took place is because it was in  
11 some of the documents that I reviewed.

12 Q. Do you know how long it took, the conversation  
13 was?

14 A. I do not.

15 Q. Was anyone else present for the conversation?

16 A. I don't recall but that would be unlikely.

17 Q. Dr. Macario's at Stanford University?

18 A. I believe so.

19 Q. During that phone call would you have known  
20 that Dr. Weisman was trying to transfer to Stanford  
21 University?

22 MR. SULLIVAN: Object to form.

23 Go ahead and answer.

24 A. I don't know.

25 Q. (By Mr. Elster) Was the conversation about

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1 Dr. Weisman?

2 A. I would assume the conversation was about Dr.  
3 Weisman, yes.

4 Q. Did you do anything to ensure that Dr. Weisman  
5 could transfer to Stanford University during that phone  
6 call?

7 A. I don't --

8 MR. SULLIVAN: -- Object to form.

9 A. I don't remember the details of the  
10 conversation.

11 Q. (By Mr. Elster) Do you remember a single word  
12 that was said --

13 A. I do not.

14 Q. -- in that conversation?

15 A. I don't, no.

16 Q. Okay.

17 A. When was that conversation?

18 Q. I'll have e-mails. We'll get to it. You  
19 don't remember when that was?

20 A. I don't.

21 Q. Other than Dr. Macario did you communicate --  
22 and Dr. Patil which we -- we talked about earlier, any  
23 other physicians or heads of any other medical  
24 institutes you can --

25 A. -- So I did not communicate with Dr. Patil

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1 verbally.

2 Q. It was in writing?

3 A. Correct.

4 Q. All right.

5 A. We mentioned Dr. Fox and Dr. Kaye, which were  
6 also e-mail communications. We spoke about Dr. Epling,  
7 which was e-mail communication. Other than those, I  
8 can't recall, no.

9 Q. Temporally do you know where the conversation  
10 with Dr. Macario occurred in relation to the -- to your  
11 declining to release his training file?

12 A. I don't.

13 Q. And you don't know which happened first?

14 A. I don't. I'd have to look at the dates.

15 Q. Flip to Exhibit 3. Part of the -- it's  
16 redacted because that's how it was produced to me so.  
17 It's two pages.

18 A. Okay.

19 Q. Okay. So on the first e-mail -- and this is  
20 just more for -- you wouldn't have any reason to  
21 believe whether some of the things communicated here  
22 are true or not true. So, for example, could not  
23 present patients with any cohesiveness?

24 A. I have no knowledge about that.

25 Q. Okay. And then likewise on -- so the next

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1 sentence: They had no clue what was going on, in  
2 reference to Dr. Weisman, and someone else's identity's  
3 redacted. And then likewise on the next page, you  
4 wouldn't have any knowledge about the type of work that  
5 was done there or described?

6 A. So this would have been before I started at  
7 Wash U. so any knowledge I gained about this would have  
8 been after the fact.

9 Q. Okay. Knowledge you gained about it. Have  
10 you spoken with Dr. Benzinger about Dr. Weisman?

11 A. I'm sure I have, yeah.

12 Q. Have you heard Dr. Benzinger make any negative  
13 statements about Dr. Weisman?

14 MR. SULLIVAN: Object to form. Vague.

15 Go ahead and answer.

16 A. I believe Dr. Benzinger expressed concerns  
17 about -- about the progress of Dr. Weisman, yes.

18 Q. (By Mr. Elster) Did he express what type of  
19 concerns?

20 A. So in general not meeting expectations and not  
21 sort of up to the level of his peers.

22 Q. Outside of Dr. Benzinger, what about Dr.  
23 Groener, have you heard him make any negative  
24 statements about Dr. Weisman?

25 MR. SULLIVAN: Objection. Vague.

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1                   Go ahead and answer.

2           A. I don't recall any specifics from Dr. Groener  
3 but -- and Dr. Groener's role but it's certainly a  
4 possibility.

5           Q. (By Mr. Elster) What about Dr. Cox?

6           A. I don't remember any specific conversations  
7 with Dr. Cox.

8           Q. What about Dr. Evers?

9           A. I don't believe I had any conversations with  
10 Dr. Evers about this, about his performance as an  
11 intern.

12          Q. What about otherwise?

13          A. This was e-mail communications with Dr. Evers  
14 but it was not specific to his performance.

15          Q. What was it about?

16          A. There was some concern about a negative review  
17 that was posted about the program that we suspected was  
18 authored by Dr. Weisman.

19          Q. And what was the concern about?

20          A. It painted the program in a negative light and  
21 wasn't -- I don't remember specifics but I don't recall  
22 it being particularly factual.

23          Q. Okay. Well, how do you know -- I know you  
24 don't have the -- what you're referring to in front of  
25 you. You said it wasn't particularly factual. What

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1 was incorrect about it?

2 A. Again, I don't recall specifics. That's just  
3 my general sense of the post when I read it.

4 Q. When evaluations are completed for residents  
5 at the anesthesiology program, what's the process for  
6 them to be completed? It's not just -- well, you go.  
7 I don't want to ask too many questions.

8 MR. SULLIVAN: Object to form. Vague.

9 Go ahead and answer.

10 A. So there's multiple ways the evaluations are  
11 completed. So ideally the resident should get verbal  
12 feedback every day about how they're doing. In lieu of  
13 that, depending on the particular rotation that they're  
14 on, they, at the end of their rotation at the very  
15 least, should get written feedback about how they're  
16 doing. That may take the form of milestones again.  
17 Sometimes they're accompanied by narrative evaluations.

18 Q. (By Mr. Elster) For the written evaluations,  
19 who would complete those?

20 A. Typically it's the rotational coordinator for  
21 their rotation.

22 Q. If not the rotational coordinator, who else?

23 A. It should be the rotational coordinator that  
24 fills out those evaluations. They might have  
25 assistance with an admin but....

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1 Q. So the rotational coordinator or an  
2 administrative assistant like a scribe or?

3 A. I wouldn't necessarily describe it as a  
4 scribe. But, for example, you know, on the peds  
5 rotation ideally we're submitting narrative comments  
6 every day. An admin might help collate all those  
7 comments and submit it to the rotational coordinator.

8 Q. Would it -- when you were the program  
9 director?

10 A. Uh-huh.

11 Q. Would you do evaluations for people you  
12 weren't the immediate program coordinator for?

13 A. Yeah, as I supervise them -- if I supervise  
14 them as a clinical faculty guy.

15 Q. What if you didn't supervise them?

16 A. If I didn't supervise them?

17 Q. Yeah. Would you do the evaluations?

18 MR. SULLIVAN: Object to form. Confusing.

19 Go ahead and answer.

20 A. So in my role as the program director I  
21 reviewed evaluations. And I might use those  
22 evaluations and incorporate them into my six-month  
23 review of the resident.

24 Q. (By Mr. Elster) Okay. If we can flip to --  
25 hand you Exhibit 4. Would you -- would you have been



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1 at Washington University at this time, December of  
2 2017?

3 A. No, I believe I started July 17th, 2017.

4 Q. Well, December is after July, right?

5 A. Sorry. Yes, you're right. Sorry.

6 Q. My question when you're ready. In that first  
7 e-mail: Please do not submit an evaluation for  
8 Weisman. And this is from Dr. Benzinger to Amy  
9 Ficklen: Collect the comments and forward them to me,  
10 but I'll do the evaluation. Is that a common practice?

11 MR. SULLIVAN: Object to form. Assumes facts  
12 not in evidence.

13 Go ahead and answer.

14 A. I don't know who Amy Ficklen is. And let me  
15 look at the e-mail.

16 MR. SULLIVAN: Yeah, read the entire e-mail.

17 A. Okay. So it appears that she is an  
18 administrator coordinator.

19 Q. (By Mr. Elster) You -- you didn't know who  
20 she was before?

21 A. No.

22 Q. And she's not at Wash U. anymore from what you  
23 know?

24 A. I have no idea. But this is the first time to  
25 my knowledge I've ever heard that name.

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1 Q. So my question then was is it common what Dr.  
2 Benzinger is describing here, Please do not submit an  
3 evaluation for Dr. Weisman. Collect the comments and  
4 forward them to me but I'll do the evaluation?

5 MR. SULLIVAN: I'll object to -- I mean, not  
6 on this e-mail but I'll object to the extent it calls  
7 for speculation.

8 Go ahead and answer.

9 A. It's not clear to me from the context of this  
10 e-mail what he is referring to. What Dr. Benzinger is  
11 referring to. So -- yeah, I'll just leave it at that.

12 Q. (By Mr. Elster) So -- when you were in Dr.  
13 Benzinger's position --

14 A. Uh-huh.

15 Q. -- because you succeeded him, did you ever  
16 give a -- send an e-mail like this where it's saying do  
17 not send an evaluation for a resident where you wanted  
18 to collect the comments and do the evaluation yourself?

19 A. When I was the program director did I ever say  
20 something similar to this? Is that your question?

21 Q. Right.

22 A. I don't believe so.

23 Q. Do you think it would have been appropriate  
24 when you were the program director to do that?

25 MR. SULLIVAN: Objection. Assumes facts not

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1 in evidence. Contrary to the facts in evidence.

2 Go ahead and answer.

3 A. It depends on -- it depends on what I was  
4 trying to accomplish with that.

5 Q. (By Mr. Elster) But to be clear, you never  
6 did do that?

7 A. I don't believe I ever did that as a  
8 program -- as a program director, no.

9 Q. Flip to Exhibit 5.

10 MR. SULLIVAN: Do you want him to read all of  
11 these e-mails or do you have specific?

12 MR. ELSTER: Oh, I'm going to have some  
13 specific questions.

14 Q. (By Mr. Elster) So the first e-mail is  
15 December of 2017?

16 A. Uh-huh.

17 Q. 15 of 2017. I think all of them are except  
18 for the last e-mail of January 11th, 2018.

19 At this time do you recall that there were  
20 some conversations about Dr. Weisman not completing the  
21 program December of 2017?

22 MR. SULLIVAN: I have no objection.

23 Go ahead.

24 A. I was included in e-mails where there was  
25 concerns raised, yes.

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1 Q. (By Mr. Elster) Okay. But you knew that  
2 there were concerns by other people, not necessarily  
3 you?

4 A. About his completion of the program?

5 Q. Correct.

6 A. Yes.

7 Q. Did you have any concerns at the time about  
8 him completing the program?

9 A. Again, my experience with him was fairly  
10 limited. But based on the incidents that I recalled  
11 and related to you, yes, I had concerns.

12 Q. Based on that one incident?

13 A. That's a pretty big incident.

14 Q. But just -- just one incident, that's it?

15 A. One incident of a patient waking up in the  
16 middle of the surgery is a big deal. And recall during  
17 surgery is a big deal. Yes, that is a big incident.  
18 Yes, I recall that.

19 Q. Okay. Did anyone wake up during the surgery  
20 with Dr. Weisman?

21 A. Had I not come into the room when I did, that  
22 is a distinct possibility, yes.

23 Q. Okay. But did it happen?

24 A. Had I not come into the room when I did, that  
25 is a distinct possibility.

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1 Q. Wasn't there some malfunctioning with some of  
2 the equipment during that surgery?

3 A. No.

4 Q. Okay. Are you sure?

5 A. There was no malfunction of the equipment.  
6 There was a failure on Dr. Weisman's behalf to use the  
7 equipment properly. Furthermore, there was a failure  
8 of Dr. Weisman to look at the monitor and realize what  
9 was going on.

10 Q. Okay. Have you ever relayed this incident to  
11 anyone else?

12 A. I probably included it in the comments to Dr.  
13 Groener but I haven't a specific memory.

14 Q. Why do you say probably?

15 A. Because it was a big deal, as I've tried to  
16 express here, so it's concerning. So I probably in my  
17 capacity as an evaluating him for that particular day's  
18 performance as a clinician, probably included it in my  
19 evaluation.

20 Q. Based on that one incident did you have  
21 concerns about his aptitude as expressed in this  
22 e-mail?

23 MR. SULLIVAN: Which e-mail are you referring  
24 to?

25 MR. ELSTER: The first one of Exhibit 5 and

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1 specifically the second paragraph.

2 MR. SULLIVAN: I would just caution you, Dr.  
3 Thompson, to read the entire first page of Exhibit 5,  
4 the first e-mail.

5 A. Okay. I'm sorry. What's your question?

6 Q. (By Mr. Elster) Okay. So there's a reference  
7 in paragraph 2 that aptitude may contribute. And this  
8 is from Dr. Benzinger. My question was, based on the  
9 incident you've described at Children's, based on that  
10 did you have a concern about his aptitude overall as a  
11 resident anesthesiologist?

12 A. Are you asking if I had personal concerns?

13 Q. Correct.

14 A. Yeah.

15 Q. Just based on that? And it's based on that?

16 A. Yes.

17 Q. Okay. Did you have any positive experiences  
18 when you were with Dr. Weisman?

19 A. Again, I don't recall all the instances where  
20 I worked with him. I know that not every instance  
21 where I worked with him did he have episodes like that.

22 Q. Would you be able to look, but not necessarily  
23 right now, on how many -- consult some document or  
24 calendar to figure out how many times you worked with  
25 him? Is there a record of that anywhere?

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1           A. So shortly after I started on staff we  
2 transitioned to a different electronic health record.  
3 So now we use Epic. And I don't recall which system we  
4 were on when -- when Dr. Weisman was training here.

5           So the answer to your question is I'm not  
6 sure. If it was on the old system, I'm not sure if we  
7 still have access to that.

8           Q. Okay. On the one, two -- fourth paragraph  
9 down there's a discussion, a one sentence paragraph,  
10 about an acceptable compromise. Do you know if Dr.  
11 Weisman ever reached any sort of agreement with Dr.  
12 Benzinger?

13          A. I'm sorry, which paragraph are you looking at?

14          Q. Fourth.

15          A. After obviously?

16          Q. Correct.

17          A. Okay.

18          Q. So there's a reference to compromise.

19               Do you know if Dr. Weisman ever reached any  
20 sort of agreement with Dr. Benzinger in connection with  
21 his leaving the program?

22               MR. SULLIVAN: I'm going to object to the form  
23 with respect to calling for a legal conclusion as to an  
24 agreement.

25               Go ahead and answer.

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1           A. I know from e-mail exchanges that Dr.  
2 Benzinger discussed with Dr. Weisman about leaving the  
3 program.

4           Q. (By Mr. Elster) Okay. Do you know if  
5 there -- in those discussions or otherwise if they  
6 reached any sort of -- if there were any discussions  
7 about the terms on which he would leave?

8           MR. SULLIVAN: Object to form with respect to  
9 it calls -- with respect to calling for a legal  
10 conclusion.

11           Go ahead and answer.

12           A. I'm sorry, what?

13           Q. (By Mr. Elster) Based on what you remember  
14 reviewed about those discussions and outside of that?

15           A. Yes.

16           Q. Do you recall any discussions about the terms  
17 of Dr. Weisman leaving, such as when it would happen,  
18 the manner, and so on?

19           MR. SULLIVAN: Same objection.

20           Go ahead and answer.

21           A. I know that they discussed -- in general terms  
22 there was basically two decisions that Dr. Weisman was  
23 sort of contemplating. Whether to stay in the program  
24 and try to finish the residency, or whether or not to  
25 leave. And I know that Dr. Benzinger and Dr. Weisman



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1 had conversations around that.

2 Q. (By Mr. Elster) Were you around for any of  
3 those conversations?

4 A. In person?

5 Q. I'll start in person first.

6 A. I don't believe I was in -- I don't believe I  
7 was around in person for any of those conversations.

8 Q. What about remotely or through e-mail  
9 communication?

10 A. I was probably -- I was included in some of  
11 the e-mail communication, yes.

12 Q. Okay. You can flip to 419, which is on the  
13 bottom right. So I'm referring to these numbers down  
14 here. And they don't necessarily go.

15 A. Okay.

16 Q. And I'm asking about the e-mail on the top.  
17 So at 8:20 a.m., which you were copied on. It says:  
18 Ultimately, a voluntary resignation isn't something one  
19 appeals; since it's voluntary, which I think is --  
20 which why I think this is a desirable outcome.

21 And looking at it, were there any  
22 conversations about removing involuntarily Dr. Weisman  
23 from the residency program?

24 A. Involuntarily removing?

25 Q. So for cause or for other reasons.

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1           A. There was concern that he might have to  
2       remediate some of his training. But to my recollection  
3       I don't believe there were conversations about removing  
4       him.

5           Q. If there was a remediation plan put into  
6       place, would there have been some administrative  
7       grievance procedure that Dr. Weisman could have  
8       initiated to dispute that?

9           A. I believe that's correct, yes.

10          Q. Okay. Is it fair to say that there is a  
11       dispute or grievance procedure if there's a voluntary  
12       resignation?

13          A. I don't know. I would presume so if it's  
14       voluntary.

15          Q. Presume so or presume not?

16          A. I would presume that there's no.

17          Q. No. Okay. As Dr. Benzinger says, It's not  
18       something you can appeal. Would you agree with him?

19          A. Well, if the resident is voluntarily leaving,  
20       then, yeah, it wouldn't make sense to then appeal the  
21       voluntary leaving. If I follow your question.

22          Q. And flip to Exhibit 6. The next one. Exhibit  
23       6 is an e-mail and then there's an attachment of the  
24       Dr. Benzinger letter.

25                 Did you give input on the contents of this

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1 letter which is attached?

2 MR. SULLIVAN: Go ahead and familiarize  
3 yourself with the letter, Doctor.

4 A. Your question is if I gave input?

5 Q. (By Mr. Elster) Correct. Because it was --  
6 it appears that it was forwarded to you. Like an hour  
7 after it was originally sent you were included.

8 A. I believe I was forwarded a draft of this and  
9 I believe Dr. Benzinger asked for input. I don't  
10 recall if I gave any input.

11 Q. Do you know who did give input on the letter?

12 A. I believe Dr. Cox had a small statement that  
13 he made about the letter but other -- other than that I  
14 don't.

15 Q. Other than Dr. Cox and Dr. Benzinger, do you  
16 know anyone else -- and the people listed on this  
17 e-mail, on the first one, the January 11th e-mail, who  
18 else would have reviewed it?

19 A. Other than the people that are already listed  
20 here?

21 Q. Correct. And then you subsequently.

22 A. I don't know that anyone else would have --  
23 would have reviewed it.

24 Q. To your understanding did everyone agree with  
25 the contents of the letter?

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1 A. That's my understanding.

2 Q. Okay. Including you?

3 A. To the extent that I was involved, yes.

4 Q. Okay. Well, to the extent that you were  
5 involved. So that could mean you weren't involved. So  
6 what --

7 A. -- Well, I wasn't -- I wasn't the program  
8 director.

9 Q. Okay. Well, I know you weren't the program  
10 director as of January 2018. But it was forwarded to  
11 you because you were the program director in waiting;  
12 is that right?

13 A. Correct.

14 Q. Okay. So would you have reviewed this at the  
15 time?

16 A. As I stated, I believe I reviewed a draft of  
17 this, yes.

18 Q. Okay. And you don't believe you made any  
19 changes to it?

20 A. I don't think so, no.

21 Q. Okay. Did you agree with -- ultimately with  
22 what was signed as this attachment here?

23 A. I'm sorry. Are you asking if I agree with?

24 Q. The contents.

25 A. With the letter?

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1 Q. Correct.

2 And it's dated January 11th, 2018. So on the  
3 same date as the e-mails.

4 A. I mean, for the most part the letter is pretty  
5 factual, so I'm not sure what I would disagree with.

6 Q. So you don't disagree with anything in there?

7 A. I don't think that there's anything here that  
8 as the associate program director I would have  
9 disagreed with.

10 MR. ELSTER: Okay. You want to take a quick  
11 break for lunch? We've been going for about an hour,  
12 if you want.

13 MR. SULLIVAN: Yeah, but let's make it  
14 quick.

15 MR. ELSTER: Okay, yeah.

16 VIDEOGRAPHER: We're off the record at 12:03  
17 p.m.

18 (Lunch break.)

19 VIDEOGRAPHER: We're back on the record at  
20 12:49 p.m.

21 Q. (By Mr. Elster) Dr. Thompson, do residents  
22 make mistakes during their residency program?

23 A. Of course they do.

24 Q. Okay. Have you ever met a resident that  
25 didn't make mistakes?

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1 A. I don't know how to answer that.

2 Q. There's not a perfect resident in terms of  
3 training, right?

4 A. Probably not, no.

5 Q. Therefore, residents that grad U. -- graduate  
6 from the Washington University Anesthesiology Program,  
7 they've all made mistakes for the most part, right?

8 A. Presumably.

9 Q. Did you ever communicate to Dr. Weisman over  
10 the phone that you couldn't write any sort of letter  
11 for him because you'd only worked with him one or two  
12 times?

13 A. I don't know.

14 Q. You don't know one way or the other?

15 A. I don't know one way or another.

16 Q. Let's flip to Exhibit 7 and I'll try to fire  
17 through these. The second page, 454, on the bottom  
18 right so it's a Bates labeling. What is the NI report  
19 in the top e-mail?

20 A. NI stands for new innovations. It's just the  
21 online sort of web portal we use -- that we use for  
22 evaluations.

23 Q. Okay. Is this -- you filled out a new  
24 innovations report. Is it related to Dr. Weisman?

25 A. I can't tell from the concept -- context of

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1 that but since you're giving it to me I would presume  
2 so.

3 Q. Okay. The bottom e-mail refers to the quest  
4 remains who will be doing Jeff Weisman?

5 The bottom e-mail says: but the quest remains  
6 on who will be doing Jeff Weisman, and it's redacted?

7 A. Formal six-month.

8 Q. Formal six-month review. So in looking at  
9 that, does the NI report relate to Dr. Weisman?

10 A. It would appear that way.

11 Q. How many of those reports did you do for him?

12 A. This -- assuming I filled this one out, this  
13 probably would have been the only one.

14 Q. Okay. Are you aware of any complaints Dr.  
15 Weisman has made that he didn't get a six-month review  
16 at any period of time?

17 A. The only complaint that I know of regarding  
18 evaluations was about the summative evaluation. So I  
19 guess the answer to your question is no, I'm not aware  
20 of that.

21 Q. And the complaint to be sure on that is that  
22 there wasn't a summative evaluation?

23 A. Correct.

24 Q. And you're saying one has been created now?

25 A. It has been.

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1 Q. Have you seen it?

2 A. I have.

3 Q. Who created it?

4 A. I believe it was Dr. Mitchell, the current  
5 program director.

6 Q. Sometime after September of 2021?

7 A. Uh-huh. If that's when the request was, yeah.

8 Q. Do you know if Dr. Mitchell has sent it to  
9 anyone?

10 A. I don't know.

11 Q. Did you assist in completing that evaluation?

12 A. I may have had some input into it. But I  
13 believe it was -- I didn't put -- I didn't put much  
14 effort into putting that together, no.

15 Q. Did anyone else have any input into putting  
16 that together?

17 MR. SULLIVAN: And just to -- I'll object to  
18 the extent it would involve any attorney-client  
19 communication, if there was any.

20 Subject to that you can answer.

21 A. The only other person that I know of that  
22 would have put input into it other than Dr. Mitchell  
23 would have been Lauren Gibson.

24 Q. (By Mr. Elster) Who is that?

25 A. Her official title is the Finance Director for



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1 Education.

2 Q. I think you've testified earlier that there  
3 was a concern that Dr. Weisman was below his peers in  
4 terms of his evaluations; is that right?

5 A. Correct.

6 Q. Okay. And when you made that, is that an  
7 opinion that you had?

8 A. So it's an opinion that I have based on my  
9 limited interaction with him. But it's also the  
10 opinion that I gathered looking at some of his other  
11 evaluations.

12 Q. And in making that determination, does that  
13 inevitably involve comparing his evaluation with other  
14 residencies -- residents' evaluations?

15 MR. SULLIVAN: Object to form.

16 A. Not necessarily comparing his evaluations to  
17 other resident evaluations, more comparing his  
18 performance to other residents.

19 Q. (By Mr. Elster) So how do you determine his  
20 performance relative to other residents without looking  
21 at other residents' files and evaluations?

22 A. I've worked with residents for the last 15  
23 years, so my comparisons are based on my experience  
24 working with other residents.

25 Q. Well, wasn't the opinion that he was below

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1 other residents at Washington University?

2 MR. SULLIVAN: Object to form. Argumentative.  
3 Go ahead and answer.

4 A. It would be my opinion that based on his level  
5 of training he's behind residents that I've worked with  
6 here and also at the University of Washington in  
7 Seattle.

8 Q. (By Mr. Elster) Flip to 458. I'm going to  
9 ask about the e-mail from Dr. Cox in the middle. So at  
10 11:48 a.m. I think you were talking about this  
11 earlier.

12 A. Uh-huh.

13 Q. There's a -- there's a request or sentiment to  
14 reschedule a meeting to after deadlines so Jeff is not  
15 receiving a letter or additional negative feedback  
16 after deadline?

17 A. Uh-huh.

18 Q. What's the deadline that's being referred to  
19 there?

20 MR. SULLIVAN: And just, Counsel, you didn't  
21 read the entire e-mail chain. That goes over to 459  
22 too.

23 A. So back to your question, I believe the  
24 deadline they're referring to is the deadline for  
25 residents or medical students to apply to residency

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1 programs through the ERAS system, E-R-A-S.

2 Q. (By Mr. Elster) What is the meeting that's  
3 being referred to as rescheduled?

4 A. I would assume from the context of the rest of  
5 the document they're referring to the six-month  
6 evaluation, but I'm not for sure positively.

7 Q. Do you know if meetings were rescheduled until  
8 after this deadline to avoid any negative comments?

9 A. I don't know.

10 Q. There's actually an e-mail you sent at the  
11 bottom of 458 and it goes into 459.

12 A. Uh-huh.

13 Q. And it says: Do we actually have evidence  
14 (other than the ACGME survey) that Jeff has said or  
15 published anything about the program?

16 A. Uh-huh.

17 Q. I guess presently now do -- do you know of  
18 anything Jeff has said, said or published about the  
19 program?

20 A. That was said concretely, no, I don't have  
21 evidence. Although, as we've discussed earlier, there  
22 was the suspicion that he created the post on  
23 ScutWork's I think is the website.

24 Q. On the e-mail later on 459 from Dr. Cox --

25 MR. SULLIVAN: -- It's actually earlier in

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1 time?

2 MR. ELSTER: Earlier in time. So it's 11:18.

3 Q. (By Mr. Elster) He refers to a recent  
4 escalation of negative activity. Last sentence, first  
5 paragraph.

6 A. Uh-huh.

7 Q. Do you have any firsthand knowledge of  
8 escalation of negative activity?

9 A. I think what Dr. Cox is referring to is the  
10 web post that I referred to earlier.

11 Q. But you wouldn't have any firsthand knowledge  
12 of escalation of negative activity?

13 A. That would represent an escalation of negative  
14 activity, yes.

15 Q. And my question is are you a witness to any  
16 negative activity by Dr. Weisman as referred to here?

17 A. If your question is do I know definitely if  
18 Dr. Weisman posted that?

19 Q. Know or witnessed any negative activity is  
20 what.

21 A. I don't concretely know that. Witnessed  
22 negative activity, no, I don't think I witnessed  
23 negative activity.

24 Q. 461. The top e-mail from Dr. Benzinger to you  
25 and Dr. Cox. The last sentence. The 1:36 p.m. e-mail

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1 says a summative letter.

2 A. Uh-huh.

3 Q. What is a summative letter?

4 A. I'm not sure exactly but I would assume what  
5 he meant was the letter of recommendation.

6 Q. Okay.

7 A. Or it could have also been a letter from the  
8 program to Dr. Weisman just kind of stating where he  
9 was in the program at that -- at that period of time.  
10 So it might be related to the six-month -- six-month  
11 review.

12 Q. Do you know if there's a distinction between a  
13 summative letter and summative evaluation?

14 A. I think they would probably be the same.

15 Q. Probably the same.

16 Flip to 489. So the top e-mail from Dr.  
17 Benzinger at 9:49 a.m. On the second to last  
18 paragraph. Do you agree with his statement: Our  
19 department will provide you or any other resident the  
20 strongest letter of recommendation that we can. It's  
21 an obligation of any residency program?

22 A. Do I agree with that statement?

23 Q. Yeah.

24 A. Absolutely.

25 Q. Do you think that you've done that for Dr.

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1 Weisman?

2 A. Provide the strongest letter we can?

3 Q. Yes.

4 A. Yes.

5 Q. Have you had any -- when you -- when you would  
6 write the letter of recommendations, aren't they just  
7 generally written to whom it may concern and then  
8 that's utilized by Dr. Weisman or another resident and  
9 given to another residency program? It's not  
10 personalized to a specific hospital?

11 MR. SULLIVAN: I'm going to object. It's  
12 compound, confusing.

13 Go ahead and answer.

14 A. It depends on the purpose of the letter.

15 Q. (By Mr. Elster) Okay.

16 A. So there are times when I will personalize the  
17 letter on behalf of a resident or a fellow.

18 Q. Did you ever personalize a letter for Dr.  
19 Weisman?

20 A. I don't recall.

21 Q. Would they just be generally worded letters,  
22 meaning to whom it may concern or so on?

23 A. Are you asking in the instance of Dr. Weisman  
24 were they generally worded letters?

25 Q. Correct.

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1           A. I believe the letters I've provided for him  
2 were generally worded, yes.

3           Q. Did he ever ask you to write a letter of  
4 recommendation for him?

5           MR. SULLIVAN: Objection. Asked and answered.  
6 Go ahead and answer.

7           A. He asked me to provide letters of  
8 recommendation on his behalf, yes.

9           Q. (By Mr. Elster) And if I understand, the only  
10 one that you had written was mostly based on Dr.  
11 Benzinger's draft; is that right?

12          A. Correct.

13          Q. Do you agree with me that it would kind of  
14 defeat the purpose of a letter of recommendation if you  
15 had a phone call with another department head where you  
16 contradict what the letter of recommendation says?

17          MR. SULLIVAN: I'm going to object to the  
18 question and form. Assumes facts not in evidence.  
19 Improper hypothetical. Argumentative.

20          Go ahead and answer.

21          A. I'm sorry. Can you repeat the question?

22          Q. (By Mr. Elster) Sure. Do you agree with me  
23 that it would defeat the purpose of the letter of  
24 recommendation if it's sent to a particular program but  
25 then you subsequently or before had a phone call with

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1 someone at that program that contradict the letter?

2 MR. SULLIVAN: Same objection.

3 Go ahead and answer.

4 A. If you're asking in generalities, that  
5 might -- that might be -- that might -- what's the word  
6 I'm looking for?

7 Q. (By Mr. Elster) Undermine?

8 A. Undermine the letter, sure.

9 Q. You can flip to Exhibit 8. I want to ask you  
10 about the bottom e-mail when you're ready. On the  
11 first page.

12 A. On 507?

13 Q. Yeah.

14 A. Okay.

15 Q. Okay. What is the CTICU?

16 A. Cardiothoracic Intensive Care Unit.

17 Q. And then the CCC, is that the Clinical  
18 Competency Committee?

19 A. Correct.

20 Q. Who was on that at this time?

21 A. So I won't be able to provide you with all the  
22 names. But in general it's headed up by Dr. Groener.  
23 And then all of the rotation coordinators are on the  
24 committee, myself, Dr. Mitchell currently.

25 Q. Okay. And then the unsatisfactory to the ABA,



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1 what is that referring to in this e-mail?

2 A. The sentence in the worst case scenario?

3 Q. Yeah.

4 A. Fails. That means that the ABA would be  
5 notified that he -- for that prior six months, that  
6 he -- his performance was deemed unsatisfactory.

7 Q. Okay. And Dr. Benzinger refers to, It would  
8 hurt his career needlessly if all three of those things  
9 happened. Do you see that?

10 A. Yes.

11 Q. Okay. Do you agree they would hurt his career  
12 if all three of those things happened?

13 A. I agree it wouldn't look good if all three of  
14 those things happened, yes.

15 Q. Did you have any conversations about Dr.  
16 Benzinger about Dr. Weisman's research request at this  
17 time?

18 A. Did I have conversations about his research  
19 request? No, I don't think I would have because I  
20 wasn't the program director.

21 Q. Outside of writing the letter of  
22 recommendation?

23 A. Uh-huh.

24 Q. That you had mentioned that was based on Dr.  
25 Benzinger's letter.

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1           Since Dr. Weisman left Washington University  
2     have you done anything to help his career?

3           MR. SULLIVAN: Object to form. Already asked  
4     and answered.

5           Go ahead and answer.

6           A. I have submitted documentation as he  
7     requested, including that letter that you referred to  
8     and rotation schedules.

9           Q. (By Mr. Elster) Flip to Exhibit 9. This is  
10    similar to an e-mail we looked at before. This is a  
11    draft of a letter that Dr. Benzinger sent to you and  
12    Dr. Cox on April 27th of 2018?

13          A. Uh-huh.

14          Q. Did you have any input as to the contents of  
15    this letter?

16          A. I believe I answered that earlier but --

17          Q. I think --

18          A. -- I believe he sent me a draft and I -- if I  
19    made any comments, it wasn't substantive.

20          Q. So this is a few months later. This is April  
21    of 2018. The one we looked at was January of 2018.

22          A. Okay.

23          Q. You don't know if you made any edits to  
24    yourself? You looked at it but you don't know if you  
25    made any edits to it?

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1 MR. SULLIVAN: Time -- time -- can we clarify  
2 time frame?

3 Q. (By Mr. Elster) In April of 2018.

4 MR. SULLIVAN: Thank you.

5 Q. (By Mr. Elster) It appears that Dr. Benzinger  
6 sent this in April of 2018 and he's asking for your  
7 comments on it.

8 A. Yeah. I'm not sure that I made any comments  
9 about this. If I did, it wasn't anything substantive.

10 Q. Did you agree with the contents of the letter  
11 before Dr. Benzinger signed it?

12 A. Yeah, I believe in general. Given the  
13 conditions it's a positive letter.

14 Q. Given the conditions, what conditions?

15 A. Well, he didn't finish the program.

16 Q. Is it common on these letters to include at  
17 the very end the person's cell phone and say contact me  
18 if you have any questions?

19 A. It's not uncommon, yeah.

20 Q. Okay. Have you ever had any communications  
21 with Dr. Benzinger about conversations he has had about  
22 Dr. Weisman with other anesthesiology programs?

23 MR. SULLIVAN: Object to form.

24 A. No.

25 Q. (By Mr. Elster) Exhibit 10. First page, 563.

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1 So this is June of 2018. It's about one month before  
2 you became program director?

3 A. Uh-huh.

4 Q. Did you come at the end of July or beginning  
5 of July?

6 A. I don't recall specifically. It probably  
7 would have been at the beginning of July.

8 Q. Okay. So about four or five days --

9 A. Yeah.

10 Q. -- before you would have started?

11 As far as you're aware is that letter of  
12 recommendation we looked at, Exhibit 9, would that have  
13 been sent to Cook County, which is the healthcare  
14 institute mentioned here.

15 MR. SULLIVAN: I'm going to object. It calls  
16 for speculation. The letter is not attached to this  
17 exhibit. He's not even on it.

18 But go ahead and answer if you can.

19 A. Do you want me to answer the question?

20 MR. SULLIVAN: Yeah, go ahead.

21 A. To my knowledge Dr. Benzinger only created one  
22 letter. So if he's saying here he's attaching a letter  
23 of recommendation, I would assume it's that letter we  
24 just looked at.

25 Q. (By Mr. Elster) Okay. And it's the one that

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1 you -- you had input on that letter, right? You didn't  
2 make any substantive changes?

3 A. Correct.

4 Q. Okay. As to the second page, 566, additional  
5 two months of intern rotations is mentioned in the  
6 second paragraph of the top e-mail. What is that  
7 referring to?

8 MR. SULLIVAN: Doctor, you might just want to  
9 read this entire e-mail, not just that, to get a  
10 context.

11 Q. (By Mr. Elster) They're spread out in 2018.

12 A. Okay. I'm sorry. So your question is what is  
13 that two months related to?

14 Q. Right.

15 A. So I don't have intimate knowledge of this but  
16 I believe that refers to him having to remediate two  
17 months of his intern clinical schedule.

18 Q. And if you can go to 598?

19 A. Okay.

20 Q. These are e-mails with you and Dr. Weisman. I  
21 think we were talking about this before earlier. Is  
22 the bottom e-mail first to Dr. Patil.

23 A. Uh-huh.

24 Q. Do you see that?

25 A. Uh-huh.

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1 Q. The program documents, is that the  
2 approximately 200 pages of training file we were  
3 talking about before?

4 A. I'm sorry, what are you referring to? At the  
5 top where I -- I said the documents will be sent out?

6 Q. Right. So below that there is an e-mail at  
7 2:59 p.m. where it appears Dr. Weisman is asking you?

8 A. Okay.

9 Q. And then Stephanie?

10 A. Uh-huh.

11 Q. To send his program documents to Dr. Patil?

12 A. Uh-huh.

13 Q. And you respond that the documents will be  
14 sent out tomorrow?

15 A. Uh-huh.

16 Q. What documents were sent out the following day  
17 because -- and I'm trying to make sense of earlier you  
18 had testified that you thought it was an administrative  
19 burden to do that.

20 A. To clarify, I thought it was an administrative  
21 burden to reproduce his entire file. As I've said  
22 previously, we were happy to send out specific things  
23 in his file.

24 Now, back to your question, what documents am  
25 I referring to? Without larger context I'm not sure

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1 what documents these were specifically.

2 Q. Do you know if any documents were sent out?

3 A. To Dr. Patil?

4 Q. Yeah.

5 A. Yeah.

6 Q. Program documents?

7 A. So I believe the documents that were sent to  
8 Dr. Patil would have been rotation schedules and  
9 perhaps milestone evaluations.

10 Q. Who would have sent those personally?

11 A. It probably would have been the administrative  
12 assistant at the time. So it may have been Stephanie  
13 Rheinheimer.

14 Q. But to confirm, do you know if those documents  
15 were in fact sent?

16 A. Without being able to see an e-mail trail,  
17 it's hard for me to say it but I have no reason to  
18 believe that they were not sent.

19 Q. On the next page, 599, you had asked -- you  
20 had asked at the 9:07 a.m. e-mail: What type of  
21 residency program are you applying to? These are part  
22 of the e-mails with you and Dr. Weisman.

23 A. Sorry.

24 MR. SULLIVAN: Where were we?

25 MR. ELSTER: At 9:07 a.m.

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1 A. Got it.

2 MR. SULLIVAN: Oh, okay. Thanks.

3 Q. (By Mr. Elster) Does it matter, the fact that  
4 it's a residency program? What's the purpose of that  
5 question?

6 A. I think -- so I don't remember specifically  
7 why I was asking that question. But probably because I  
8 don't think anesthesiology would have been a good  
9 choice for him to transfer.

10 Q. Why?

11 A. For reasons that we've already alluded to.

12 Q. So if it was a different specialty or a  
13 different practice outside of anesthesiology, would it  
14 be fair to say that you would have provided a different  
15 level of assistance?

16 A. No.

17 MR. SULLIVAN: Object.

18 A. I don't think that's a fair statement.

19 MR. SULLIVAN: Argumentative. Objection.  
20 Go ahead and answer.

21 Q. (By Mr. Elster) Okay.

22 A. I would have provided the same level of  
23 support. I think it would have made me feel more  
24 comfortable had he not chosen anesthesiology as a  
25 discipline.



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1 Q. For the reason because of what we've talked  
2 about already?

3 A. Correct.

4 Q. Did you ever communicate that to Dr. Weisman  
5 in 2018 when he was asking you for a letter of  
6 recommendation?

7 A. Did I ever communicate that I had concerns if  
8 he was trying to go into anesthesiology?

9 Q. Correct.

10 A. I don't believe so.

11 Q. Why not?

12 A. I'm not sure that that ever came up.

13 Q. Okay. Well, you brought it up here. What  
14 type of residency program was it?

15 A. Well, I asked a question. I don't know that I  
16 ever had a conversation with him about his  
17 appropriateness of going into anesthesiology or not.

18 Q. At that time you thought it was inappropriate  
19 for him to go into anesthesiology?

20 A. I guess I would reword the question. Would I  
21 feel comfortable with Dr. Weisman taking care of a  
22 family member or my children, no.

23 Q. As of 2018?

24 A. Correct.

25 Q. Okay. Including thereafter?

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1           A. Well, it's kind of a moot question because he  
2 never finished an anesthesiology residency training  
3 program.

4           Q. Did Stephanie -- you said her last name was  
5 Wineheimer?

6           A. Rheinheimer.

7           Q. Rheinheimer.

8           A. And I apologize. I don't know how to spell  
9 that.

10          Q. Is she still at Washington University?

11          A. She's no longer in the Department of  
12 Anesthesiology. I believe she's still at Wash U. but  
13 I'm not positive.

14          Q. Flip to 601. So 601 to 604 are similar. Not  
15 the same thing as we just saw in Exhibit 20.

16          A. I'm sorry, 604?

17          Q. 601 to 604 are part of the same e-mail chain.  
18 And I believe those are the same as what we saw in  
19 Exhibit 20.

20               MR. SULLIVAN: I think in the last -- at least  
21 the first e-mail in the chain as Exhibit 20 without the  
22 attachment. So if you want to familiarize yourself  
23 what these e-mails, Doctor.

24          A. Okay.

25          Q. (By Mr. Elster) Okay. In looking at these

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1 e-mails, these kind of refer to what we were talking  
2 about before in Exhibit 20 and the signed release --

3 A. Uh-huh.

4 Q. -- or the release that was provided. And on  
5 603, it appears to be the same e-mail as was the  
6 exhibit here as the release?

7 A. Uh-huh.

8 Q. In looking at these do you still think the  
9 release that we talked about in Exhibit 20 was related  
10 to your recommendation letter?

11 MR. SULLIVAN: Object to the form. The  
12 e-mails speak for themselves.

13 Go ahead and answer.

14 A. So if I refer to the e-mail dated November  
15 28th, it would appear that it's related to the letter  
16 as well as rotation schedule.

17 Q. (By Mr. Elster) The doc be -- the rotation  
18 schedule would just be his rotations that he worked --

19 A. Correct.

20 Q. -- while at the....

21 And you never had any -- who is Dr. Fox  
22 referenced there?

23 A. I don't know who that individual is. I  
24 assumed it's somebody at one of these programs that Dr.  
25 Weisman was applying to.

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1 Q. Is it someone at the University of Chicago?

2 A. I don't know.

3 Q. And Dr. Kaye we talked about?

4 A. I believe that's -- Dr. Kaye is from Louisiana  
5 I believe.

6 Q. Did you have any other communications orally  
7 or in writing with them about Dr. Weisman?

8 A. I never spoke with them in person. I may have  
9 exchanged other e-mails with them but it would have  
10 been at the request of Dr. Weisman.

11 Q. What about phone calls?

12 MR. SULLIVAN: Objection. Asked and answered.

13 A. I never spoke with him.

14 Q. (By Mr. Elster) You can flip to Exhibit 11.  
15 We start in the back. These aren't Bates labeled  
16 because they were from Stanford. So the back page to  
17 the front.

18 MR. SULLIVAN: So just one item, Henry. I  
19 guess they were marked confidential by Stanford?

20 MR. ELSTER: They were.

21 MR. SULLIVAN: I don't know if there's -- I  
22 haven't had any communications with Stanford so I don't  
23 know if there's any obligation to be confidential.  
24 I'll leave it to you.

25 MR. ELSTER: I don't think it matters.

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1 MR. SULLIVAN: Okay.

2 Q. (By Mr. Elster) Okay. So on page 1 and going  
3 into page 2, there's an e-mail from you to Dr. Macario  
4 on December 7th, 2018?

5 A. Uh-huh.

6 Q. Was it at this time that Dr. Macario was  
7 reaching out to you to discuss Dr. Weisman?

8 A. It was around that time, yes.

9 Q. Okay. Is there a reason you didn't give  
10 your -- any feedback in any e-mail or in writing? You  
11 just provided a phone number?

12 A. I don't recall what specific -- what specific  
13 reason I would have had other than he already had the  
14 letter of recommendation.

15 Q. So you knew as of December 7th of 2018 that  
16 Dr. Macario had the letter of recommendation that he  
17 wrote; is that correct?

18 A. I don't know that he had it definitively, but  
19 by that time I would have assumed he would have had it.

20 Q. Did you communicate -- did you know who  
21 Dr. Macario was before December of 2018?

22 A. No.

23 Q. Okay. Above that it says: Here you go.  
24 Attached to the December 7th at 2:17 p.m. Do you know  
25 what you provided in that?

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1           A. It's hard to know without further context. It  
2 probably was the letter of recommendation.

3           Q. Okay. And then immediately above that,  
4 December 8th, 2018, so it would be the following  
5 morning?

6           A. Uh-huh.

7           Q. In looking at that e-mail and it says: Spoke  
8 with Douglas. Would the communication, that have  
9 happened sometime between December 7th at 2:17 and  
10 December 8 here?

11          A. Uh-huh.

12          Q. The phone call would have happened at that  
13 point?

14          A. So I -- presumably the phone call occurred  
15 after 2:17 on the 7th.

16          Q. Okay. And you had spoken -- it says: Spoke  
17 with Douglas on phone and please see attached letter.  
18 Several red flags. We should pass on him.

19               Do you know what that's referring to based on  
20 your phone call with Dr. Macario?

21               MR. SULLIVAN: I'll object to form. Calls for  
22 speculation.

23               But go ahead and answer.

24          A. I don't recall. First of all, I don't  
25 actually recall having this conversation with

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1 Dr. Macario. The only reason I know that it happened  
2 is because of these e-mail chains. I don't recall  
3 specifics that I discussed with Dr. Macario nor is it  
4 clear to me if his comment is referring to the  
5 conversation I had with him or the letter.

6 Q. (By Mr. Elster) The recommendation letter  
7 that you wrote?

8 A. Correct.

9 Q. Would it have been common to talk -- to  
10 discuss Dr. Weisman's abilities as a resident  
11 anesthesiologist during that phone call?

12 MR. SULLIVAN: Object to form. Asked and  
13 answered. Calls for speculation.

14 Go ahead and answer.

15 A. It would have been reasonable to discuss that  
16 during the call, yes.

17 Q. (By Mr. Elster) Would you have expressed your  
18 opinions about Dr. Weisman?

19 MR. SULLIVAN: Object to form. Calls for  
20 speculation.

21 Go ahead and answer.

22 A. Would I have expressed my opinions, possibly.

23 Q. (By Mr. Elster) Okay. At that time you agree  
24 that you don't think he would have been a suitable  
25 anesthesiologist, right, so December of 2018?

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1 A. Correct.

2 Q. At that time you believe that he shouldn't  
3 have been a resident anesthesiologist, right?

4 A. I believe anesthesiology was a poor fit.

5 Q. Okay. At that time did you have concerns  
6 about his ability as a physician generally outside of  
7 anesthesiology?

8 A. No.

9 Q. Okay. Would you have communicated any of the  
10 other concerns from Dr. Benzinger, Dr. Groener, or  
11 Dr. Cox during that phone call?

12 MR. SULLIVAN: I'm going to object. Calls for  
13 speculation.

14 Go ahead and answer if you can.

15 A. It's possible that I would have conveyed my  
16 general sort of sense of his aptitude. I don't know  
17 that I would have specifically referred to comments  
18 made by Dr. Cox, Groener, or Dr. Evers.

19 Q. (By Mr. Elster) And your general sense of his  
20 aptitude in December of 2018 was that he should not be  
21 an anesthesiologist, right?

22 A. My general sense was anesthesiology was a poor  
23 fit, yes.

24 Q. Okay. Did you give any positive statements  
25 about Dr. Weisman in that phone call?



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1 MR. SULLIVAN: I'm going to object to form.  
2 Calls for speculation.

3 Go ahead and answer.

4 A. I don't recall the specifics of the phone call  
5 so I can't answer.

6 Q. (By Mr. Elster) And likewise did you give any  
7 negative statements about Dr. Weisman?

8 MR. SULLIVAN: Object. Asked and answered.

9 A. Same answer.

10 Q. (By Mr. Elster) If you were to have expressed  
11 the sentiment to Dr. Macario about Dr. Weisman's  
12 aptitude as an anesthesiologist on this phone call,  
13 don't you agree with me that that would have undermined  
14 the recommendation letter that you wrote?

15 MR. SULLIVAN: I'm going to object to form.  
16 Calls for speculation.

17 Go ahead and answer.

18 A. It probably would depend on how that  
19 information is received in the larger context,  
20 including a letter of recommendation.

21 Q. (By Mr. Elster) Okay. So the letter of  
22 recommendation, and that's Exhibit 12. It's in the  
23 first two pages of 691 to 692. Is this a sample of the  
24 one you wrote?

25 A. It appears to be.

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1 Q. Okay. So this one is only a page and a half  
2 long. And some of the prior iterations we've seen from  
3 Dr. Benzinger were longer. Sometimes double in length.  
4 Would you have edited this down?

5 MR. SULLIVAN: I'm going to object to form.  
6 Assumes facts not in evidence.

7 Go ahead and answer.

8 A. I would have to compare them side by side.  
9 But it is in fact shorter and the font is the same and  
10 the formatting is the same, then presumably, yes, I  
11 edited out some things.

12 Q. (By Mr. Elster) Are there any other  
13 substantive iterations of the letter that you would  
14 have signed for Dr. Weisman other than what we see in  
15 691 to 692?

16 A. I don't believe so. I'm not in the routine of  
17 doing extra work.

18 Q. So if there was a letter that was sent to  
19 Stanford, it would basically be this one we see in 691  
20 and 692?

21 MR. SULLIVAN: I'm going to object to form.  
22 The letter sent to Stanford is going to speak for  
23 itself.

24 Go ahead and answer.

25 A. So the letter would have been either this

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1 letter or it would have been the letter that Dr.  
2 Benzinger created. But it would have been one of the  
3 two.

4 Q. (By Mr. Elster) Okay. As to the start of the  
5 paragraph on the first page here 691 to 962, is it fair  
6 to say that most of the sentiments you express here are  
7 based on what others have communicated to you, not your  
8 own personal observations?

9 MR. SULLIVAN: Object to form.  
10 Mischaracterizes the testimony.

11 Go ahead and answer.

12 A. Well, as I emphatically stated previously, I  
13 did have interactions with Dr. Weisman. I speak --  
14 spoke to his clinical acumen. So I think it's a  
15 combination of my personal experience along with what I  
16 gathered from a review of his evaluations.

17 Q. (By Mr. Elster) As far as you're aware has  
18 that letter, the first two pages, is that the version  
19 of the letter that was sent to Dr. Kaye and then Dr.  
20 Fox who was at the University of Chicago?

21 MR. SULLIVAN: Object to form. Those letters  
22 will speak for themselves.

23 Go ahead and answer.

24 A. Again, it would have either been this letter  
25 or it would have been the one that Dr. Benzinger

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1 created. If it was being asked of me to send as the  
2 program director, I might have changed the signature.  
3 But other than that, there wouldn't have been any big  
4 changes.

5 Q. (By Mr. Elster) 695. So this is as of  
6 October of 2018, the top e-mail that you sent. What  
7 reports would you have sent at that time as I  
8 understand it's changed to the left here, September of  
9 2021?

10 MR. SULLIVAN: Doctor, I at least encourage  
11 you to read the -- just the e-mails on 695.

12 A. Okay.

13 So with regards to the ABA, we are required as  
14 a program every six months to basically comment on  
15 whether the resident is making -- is satisfactory or  
16 unsatisfactory.

17 Q. (By Mr. Elster) Okay.

18 A. With regards to the ACGME, that probably  
19 refers to milestone evaluations.

20 Q. And were those sent at that time period?

21 A. To my knowledge.

22 Q. Okay. And the e-mail below that at 2:33  
23 p.m. -- two below that. It says: I am committed to  
24 supporting your application for whichever specialty you  
25 choose. And this is September of 2018?

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1 A. Uh-huh.

2 Q. Why didn't you communicate -- is that actually  
3 a true statement? At the time you were committed to  
4 supporting his application for whatever specialty he  
5 chose?

6 A. Absolutely.

7 Q. But didn't you testify earlier that if it was  
8 for anesthesiology you didn't think he would be a good  
9 anesthesiologist?

10 A. I believe what I said was I personally don't  
11 think it would have been a good choice but I would have  
12 still supported him. It does our program no good to  
13 put residents out there that aren't succeeding.

14 Q. But do you believe you have supported him  
15 fully?

16 A. I believe we have supported him, yes. I also  
17 believe that the residency program has an obligation to  
18 be truthful when we recommend residents to other  
19 programs or to other employees. With those two  
20 statements in mind, yes, I do think we've supported  
21 him.

22 Q. Did you ever ask that he sign a FERPA waiver  
23 for the release of his file?

24 A. I know that that was included in documentation  
25 so yes.

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1 Q. For his own file he needed to sign a FERPA  
2 waiver?

3 A. I believe the FERPA waiver was in the context  
4 of sending a letter of recommendation somewhere.

5 Q. Refer you to Exhibit 13. And we talked about  
6 some of these before. This is when Dr. Weisman was  
7 still at the residency program. You wouldn't have  
8 knowledge of any of the instances described on 2730,  
9 2731, and 2733? You can take a look at them.

10 MR. SULLIVAN: You want to read those, Doctor?

11 Q. (By Mr. Elster) 2733 we looked at earlier but  
12 let's include it again.

13 A. Okay.

14 Q. Am I correct that you wouldn't have any  
15 firsthand knowledge of any of the instances there?

16 A. I don't believe so, no.

17 Q. Okay. You don't? Okay. I'm just going to  
18 move on.

19 A. Okay.

20 Q. Exhibit 14 is 2908 to 2924. And this appears  
21 to be a few documents we've been talking about,  
22 evaluation roles and what have been --

23 A. Submitted to them.

24 Q. -- submitted to the evaluations. I want to  
25 see if this is what we've been talking about. So as we

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1 go through if you can identify what these are?

2 A. So these appear to be notifications of  
3 rotations as well as satisfactory or unsatisfactory to  
4 the ABA.

5 Q. And is that just the first two pages, 2908 and  
6 2909, or does it go beyond?

7 A. It looks like it goes beyond that.

8 Q. When does it stop?

9 A. It looks like it stops at 2913.

10 Q. Okay. So this would be -- 2908 to 2913 would  
11 be an example of a six-month report sent to the ABA?

12 A. What we send every six months, yes.

13 Q. Okay. But it's sent every six months. And  
14 who would be responsible for completing this?

15 A. Are you asking who actually submits it?

16 Q. Who would be responsible for the contents?

17 A. It would be the program director.

18 Q. Okay. So this would have been Dr. Benzinger  
19 in 2017?

20 A. Correct.

21 Q. Okay. The next set of documents on 2914, what  
22 is that?

23 A. These look like the reports that are sent to  
24 the ACGME. So the milestone evaluations.

25 Q. Prior to September of 2021 did you consider

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1 these to be compliant with the summative evaluation  
2 requirement?

3 A. So I've answered this previously. But to  
4 reiterate, we believed that the document that we put  
5 together once a resident completed the program met that  
6 requirement.

7 Q. And did --

8 A. -- Dr. Weisman leaving early was a one off,  
9 and so we used the milestone evaluation in lieu of what  
10 we thought was the summative evaluation.

11 Q. So beginning on 2914, would this be an example  
12 of what you used to in lieu of a summative evaluation?

13 A. Correct.

14 Q. And this would be just sent to the ACGME?

15 A. It would have been sent to the ACGME. But in  
16 Dr. Weisman's instance, he also asked for these to be  
17 sent to other programs as well.

18 Q. Okay. 2914, and it's sideways, in this  
19 probation and remediation document.

20 A. Okay.

21 Q. Do you know what that's referring to?

22 A. Not intimately. But looking at the date, I'm  
23 assuming this referred to his internship year.

24 Q. Okay. So are you suggesting that interns are  
25 on probation or remediation or is this?



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1           A. I'm suggesting that given that that's checked  
2 that he must have been placed on probation as an  
3 intern.

4           Q. Okay.

5           A. I mean, at least that's what the form  
6 suggests. Again, I don't have intimate knowledge of  
7 this.

8           Q. Do you have any knowledge of him being placed  
9 on probation?

10          A. I believe that that was a question that I  
11 asked of Dr. Benzinger because I had to fill out a form  
12 on behalf of Dr. Weisman.

13          Q. Okay.

14          A. And I believe in that communications with Dr.  
15 Benzinger I was led to believe that he had not been  
16 placed on probation.

17          Q. Would you agree with me that this suggests  
18 that he was to the contrary placed on probation?

19          A. I agree that that form -- this form would lead  
20 one to that conclusion.

21          Q. The levels -- the Levels 1, 2, 3, 4, and 5?

22          A. Uh-huh.

23          Q. Is there any sort of rubric explanation as to  
24 what those generally mean?

25          A. I mean there's verbiage that are associated

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1 with each of these levels. Plainly Level 1 is what you  
2 would associate with, you know, a novice. Level 5 is  
3 sort of expert or aspirational level.

4 Q. Do the levels correspondence to the years of  
5 the residency program? So if you're at Level 1, that  
6 would be you're corresponding -- you're performing  
7 consistent with?

8 A. Not necessarily. But it is common that as you  
9 progress through the residency, then the level should  
10 be close to their level of training but it's not like  
11 an exact correlation. It will depend on the resident.

12 Q. It's a rough equivalency though?

13 A. I think that's fair.

14 Q. Okay. Is the remainder of this document all  
15 considered the milestone evaluation, 2914 to 2924?

16 A. 2922 does not look to be a milestone  
17 evaluation, no.

18 Q. Do you know what that is?

19 A. This looks to be an example of the six-month  
20 evaluation that we do with the residents.

21 Q. And this is just internal?

22 A. I think that we use -- when I was the program  
23 director I would use these to help complete the  
24 milestone evaluations. But, I guess, yeah, I would say  
25 these are internal.

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1 Q. Okay. If we can flip to Exhibit 15, I want to  
2 ask about your e-mail. So at 7:59 p.m. you said: I  
3 really don't like that I inherited this problem. What  
4 are you referring to?

5 A. Well, any time a resident leaves a program  
6 it's a problem. It's problematic.

7 Q. How many residents left the program when you  
8 were program director?

9 A. I think I answered that question before.  
10 There was one that left voluntarily and then there was  
11 one that was asked to leave for cause.

12 Q. If we can flip to Exhibit 18. This Dr.  
13 Avidan, did he succeed Dr. Evens?

14 A. Dr. Avidan, yes.

15 Q. Oh, it's pronounced Avidan?

16 A. Avidan.

17 Q. Okay. I want to ask about your e-mail on the  
18 become of 3720. Who's the Bruno?

19 A. He -- Bruno was one of the chief residents at  
20 that time.

21 Q. "Bruno has asked that in preparation for  
22 recruitment season I say a few words about Jeff  
23 Weisman." What is the -- where is the context of this  
24 e-mail?

25 A. I believe the next sentence gives the context.

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1 Or the next paragraph maybe. I think this was in  
2 reference to what we call an all resident meeting.  
3 It's actually in the subject. I'm sorry. All resident  
4 meeting.

5 Q. Okay. So there would have been a meeting  
6 sometime after this e-mail, an all resident meeting in  
7 which Dr. Weisman was discussed?

8 A. No. I don't think we discussed anyone by  
9 name. I think what we discussed was that there were  
10 residents that had left.

11 Q. Okay. So what few words were said about Dr.  
12 Weisman?

13 A. If you're asking me what specifically did I  
14 say, I don't remember.

15 Q. What generally did you say?

16 A. Well, it's, you know, all this stuff is  
17 treated confidentially. But from the resident  
18 perspective, if you're not the resident that's involved  
19 it can be a little concerning when people suddenly  
20 disappear from the program. And so I think what I was  
21 trying to do was, in general terms, explain that there  
22 were residents that had left for personal reasons.

23 Q. Wasn't this over a year, 'cause this is 2019?

24 A. Uh-huh.

25 Q. Didn't Dr. Weisman leave a year prior?

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1 A. Apparently.

2 Q. Okay. So what -- was there a reason a year  
3 later there was a residents discussion about this?

4 A. I think I referenced that elsewhere in the  
5 e-mail, "We're at a point in the residency" -- in the  
6 first paragraph. "We're at a point in the residency  
7 where about half the residents know them and half  
8 don't." So there were still residents there that knew  
9 that they had left.

10 Q. In the second paragraph of that e-mail at 9:23  
11 a.m. you stated in parentheses: There's probably more  
12 that could have been done for Dr. Weisman. What more  
13 could have been done?

14 A. I'm not sure what I was referring to  
15 specifically.

16 Q. Is that a true statement, that more could have  
17 been done?

18 A. It's hard to know. I wasn't the program  
19 director when he was here.

20 Q. Okay. Do you agree with the contents of this  
21 e-mail you sent on 9:23 a.m.?

22 A. I must have had reason to agree with it or I  
23 wouldn't have written it down.

24 Q. Okay. Do you agree with it now?

25 A. I'm not sure.

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1 Q. You don't know if you agree with this e-mail  
2 that you sent?

3 A. Well, at the time I wrote this e-mail I didn't  
4 have privy to all the documents that I have now.

5 Q. Okay. So privy to documents, is there  
6 something that has changed your opinion since --

7 A. -- I think if you look at the documents --

8 Q. -- Hold on. Since October of 2019, has  
9 something -- have you become privy to something that  
10 has changed your -- what you wrote here?

11 A. So, some of these documents I wasn't privy to  
12 at that time when I wrote that e-mail.

13 Q. Okay.

14 A. And I think when you look at these in whole,  
15 my impression is that the program actually did a fairly  
16 good job trying to be supportive. So I'm not sure that  
17 I would still agree with that statement.

18 Q. But at the time you wrote this --

19 A. -- You've already asked this question.

20 Q. Okay. And I haven't finished the question  
21 yet.

22 At the time you wrote this and before your  
23 deposition today, did you ever express to anyone that  
24 you thought the program was adequately supportive of  
25 Dr. Weisman?

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1 A. Can you repeat the question?

2 Q. Before the deposition?

3 A. Uh-huh.

4 Q. Had you ever expressed to anyone other than  
5 your attorney that the program was supportive of Dr.  
6 Weisman?

7 A. If you're asking me to recall a specific  
8 conversation, I'm not sure.

9 Q. And I'm not. I'm asking if you expressed it.

10 A. If I've expressed the sentiment that I think  
11 the program tried to support Dr. Weisman?

12 Q. Right.

13 A. I believe I expressed that sentiment, yes.

14 Q. Are there any specific examples you can think  
15 of now that the program could have done differently  
16 with respect to Dr. Weisman?

17 MR. SULLIVAN: Object to form. Calls for  
18 speculation.

19 Go ahead and answer.

20 A. Well, I think one of the communications from  
21 Dr. Benzinger alluded to the fact that -- I think it  
22 was actually in his letter of recommendation -- that  
23 admitting Dr. Weisman into the ASAP, the A-S-A-P  
24 research track, in retrospect probably wasn't the best  
25 idea. So that would I think have allowed Dr. Weisman

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1 to concentrate more on clinical or acquisition of  
2 clinical skills

3 Q. (By Mr. Elster) Anything other than that?

4 A. I think the program did a lot to try to  
5 accommodate Dr. Weisman, so I can't think of anything  
6 specifically.

7 Q. Exhibit 19. We can go to 3832 to 3833. This  
8 is -- and I'm asking about the e-mail 10:24 p.m. on  
9 3832.

10 A. Okay.

11 Q. And it goes into the next page. There was a  
12 time line?

13 A. Uh-huh.

14 Q. Some sort of indication of what was done in  
15 terms of letters or requests being sent out?

16 A. Uh-huh.

17 Q. We haven't talked about Dr. Baxton?

18 A. Uh-huh.

19 Q. UYC, September 23rd, 2020. Did have any  
20 communications with Dr. Baxton?

21 A. I believe he's the individual that asked --  
22 that asked for the summative evaluation. That's where  
23 that whole issue came up.

24 Q. And that would have happened in September  
25 2020, is that correct, in looking at this?



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1 A. If I -- apparently, yeah.

2 Q. Okay. At that time did he indicate to you  
3 that a summative evaluation was needed?

4 A. It says that in the earlier e-mail, yes.

5 Q. Okay. And do you agree with that; does that  
6 sound right?

7 A. Do I agree that he requested a summative  
8 evaluation?

9 Q. From you in September 2020?

10 A. Assuming that's the right date, yes.

11 Q. Okay. Did you provide one in September of  
12 2020?

13 A. I don't think we provided one in September  
14 2020, no.

15 Q. Did you ever provide him one?

16 A. We provided one. I don't know where we sent  
17 it. I'm not sure if we sent it to Baxton -- to Dr.  
18 Baxton or somewhere else.

19 Q. Where would you have sent it if not him?

20 A. I'm not sure.

21 Q. So I'm going to ask you. I only have two  
22 copies but I'll give you my copy of documents bates  
23 labeled 4057 to 4059.

24 MS. RUTTER: It was marked as Benzinger  
25 Exhibit 37 yesterday.

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1 Q. (By Mr. Elster) Yeah. Exhibit 37.

2 What's the first page?

3 A. Are you talking about 4057?

4 Q. I am. Is that an e-mail?

5 A. Looks like an e-mail from Lauren, yes.

6 Q. Okay. Attached to that appears to be like a  
7 track change or edited version of a letter.

8 A. Uh-huh. Uh-huh.

9 Q. Who did the editing on that?

10 A. I would assume it's probably Lauren.

11 Q. Okay. Would anyone else have worked on the  
12 letter other than Lauren Gibson and you?

13 A. I'm sure that she asked for input from myself  
14 and Dr. Mitchell, yes.

15 Q. Dr. Mitchell would have had input on it too?

16 A. Dr. Mitchell was the program director, I  
17 believe, at the time of this, yes, 2022.

18 Q. Would Dr. Mitchell have had any firsthand  
19 training or experience with Dr. Weisman?

20 A. I would have to look at Dr. Weisman's rotation  
21 schedule's to know if they overlapped.

22 Q. What's the date of the cover letter -- the  
23 cover e-mail, 4057?

24 A. February 2022.

25 Q. Okay. Why would there be -- why were there

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1 revisions being made in February of this year?

2 MR. SULLIVAN: Objection. Asked and answered.

3 Go ahead and answer.

4 A. If your question is why are there track  
5 changes to this?

6 Q. (By Mr. Elster) Correct.

7 A. Because I think what Lauren did was she took  
8 what we typically provide to a graduating resident and  
9 tried to tailor it to Dr. Weisman.

10 Q. Okay.

11 A. So, for example, Dr. Weisman may not have  
12 completed PACU TEE ACT/float, OB, Regional and Float,  
13 which is why those are crossed out.

14 Q. Okay.

15 A. So rather than create a whole new document de  
16 novo, she probably took a preexisting example and tried  
17 to tailor it to Dr. Weisman.

18 Q. But in February of 2022 you were -- you were  
19 no longer the head of the program?

20 A. Correct.

21 Q. So why would you have been included on this?

22 A. I think she was looking for input into the  
23 letter.

24 Q. Flip to Exhibit 21.

25 MR. SULLIVAN: I'm sorry what was this one.

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1 MR. ELSTER: 21.

2 MR. SULLIVAN: Thanks.

3 Q. (By Mr. Elster) Did you receive any inquiries  
4 from Harvard about Dr. Weisman?

5 A. I don't believe so.

6 Q. Okay. Do you know if he was attempting to  
7 apply there in August of 2018?

8 A. To Harvard? I don't believe I knew that.

9 Q. Did he ever request you to complete any  
10 documentation before August 28th of 2018 to support him  
11 in transferring?

12 A. I don't know. I know that he requested me to  
13 submit documentation on his behalf. I don't know if it  
14 was prior to August of 2018 though.

15 Q. If before August of -- August or -- if he  
16 would have requested this in August of 2018 would you  
17 have completed it?

18 A. Yes.

19 Q. Exhibit 22. This is the following day.

20 A. Okay.

21 Q. Where Dr. Weisman makes a request to you for  
22 the ACGME evaluation form and they also requested a few  
23 different things.

24 A. Uh-huh.

25 Q. Did you comply with this request here for

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1 information?

2 A. I believe so. And I believe this is -- this  
3 was what prompted me to reach out to Dr. Benzinger to  
4 make sure that I was filling this out correctly on Dr.  
5 Weisman's behalf.

6 Q. Okay. Do you know if anything was sent to  
7 Harvard?

8 A. I have no reason to believe it wasn't sent to  
9 Harvard if that was the request.

10 Q. Flip to Exhibit 23.

11 Do you know who Ann Backus is?

12 A. I do not.

13 Q. I guess would it -- would it be surprise --  
14 would it be surprising to know that Harvard never  
15 received any information from Washington University?

16 MR. SULLIVAN: Object to the form of the  
17 question. Assumes facts not in evidence. Calls for  
18 speculation.

19 Go ahead and answer.

20 A. I would be surprised if that was the case,  
21 yes.

22 Q. (By Mr. Elster) Do you think as the program  
23 director at the time you had an obligation to at least  
24 release that information?

25 MR. SULLIVAN: Objection. Asked and answered.

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1                   Go ahead and answer.

2           A. Yeah. If it was requested on his behalf,  
3 yeah, we should have.

4           Q. Who would have personally sent that  
5 information?

6           A. It probably would have been whoever the admin  
7 was at that time. Might have been Stephanie but I'm  
8 I'm not certain.

9           Q. I think we talked about this a little bit,  
10 Exhibit 24. It's a two page.

11          A. Okay.

12          Q. After Doctor -- after you attempted to e-mail  
13 to Dr. Patil did you try to get in contact with Dr.  
14 Patil to send the information through other means?

15          A. Other than e-mail?

16          Q. Correct.

17          A. I know I never spoke with her. I think e-mail  
18 would have been the only venue I would have tried to  
19 communicate with her to send her this.

20               MR. ELSTER: Let's take a quick break and let  
21 me meet with the client to see if I have anything else.

22               VIDEOGRAPHER: We're off the record at 1:56  
23 p.m.

24               (Short break.)

25               VIDEOGRAPHER: We're back on the record at

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1 2:22 p.m.

2 Q. (By Mr. Elster) Dr. Thompson, of the  
3 recent -- or what percentage, I guess you'd say, of  
4 recent anesthesiology graduates have employers or  
5 perspective employers contact you when you were  
6 department head?

7 A. When I was the program director?

8 Q. Yeah.

9 A. What percentage?

10 Q. Yeah.

11 A. I'd be guessing but it's -- and I also guess  
12 it depends what your question is. Every single  
13 employer has to contact the program for training  
14 verification. Is that what you mean?

15 Q. Okay. So training verification that they  
16 completed the program, there needs to be some written?

17 A. Correct, documentation.

18 Q. So independent of written documentation of  
19 training verification?

20 A. So you're asking about how often do I get like  
21 a personal outreach to talk about or discuss a  
22 particular resident?

23 Q. Sure.

24 A. Not very often.

25 Q. Okay. Less than half the time?

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1 A. Yeah, less than half the time.

2 Q. In the instances that it did occur, what would  
3 be the type of situation it would be? Would it be  
4 because there were particular concerns about the  
5 resident or just certain employers were....

6 A. No. Mostly it was just to check in and see  
7 how the resident was doing overall. Or how they did  
8 overall.

9 Q. Okay. So less than half the time?

10 A. Yeah.

11 Q. Okay. Did you ever have any communications  
12 with anyone at Cleveland Clinic about Dr. Weisman?

13 A. I don't think so. Not that I can recall.

14 Q. Do you know anyone who works in the  
15 anesthesiology department at Cleveland Clinic?

16 A. Do I know any one person who works at  
17 Cleveland Clinic?

18 Q. Right.

19 A. I don't think so.

20 Q. While you were in as program director, was  
21 there any investigation of any copyright infringement  
22 violations?

23 A. While I was the program director? Copyright  
24 infringements. I'm not sure if I was the program  
25 director or not but I think that there was an instance



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1 where residents were freely sharing textbooks I think  
2 on a website. And I think that was investigated. I'm  
3 not sure if I was the program director but I know I was  
4 at Wash U. when that happened.

5 Q. Do you know if it was before or after you were  
6 the program director?

7 A. I don't. I think Jake McDowell was one of the  
8 chief residents, which would lead me to believe it was  
9 before I took over as program director.

10 Q. So that would have been in 2017 then?

11 A. Yeah.

12 Q. Do you know if Dr. Weisman had any involvement  
13 in the investigation of the copyright infringement?

14 A. I think there was a suspicion that Dr. Weisman  
15 was the person that reported that. But I don't think  
16 anything was ever conclusively proven.

17 Q. Did you ever refer to Dr. Weisman as, quote,  
18 the gift that keeps on giving?

19 A. I think I referred to him that way, yes.

20 Q. What do you mean by that?

21 A. Exactly what it sounds like. It was a  
22 problematic instance for the program that seemingly  
23 never goes away.

24 Q. And when would you have said that?

25 A. I don't recall specifically. I would guess it

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1 would have been probably 2018.

2 Q. When you were department -- when you were --

3 A. -- When I was program director, yes.

4 Q. And would that have been in the context of  
5 what?

6 A. I don't recall.

7 Q. Who would you have repeated that to?

8 A. I don't recall.

9 Q. Would it have been people at Washington  
10 University?

11 A. Probably.

12 Q. Okay. Did Dr. Weisman ever express any  
13 concern to you that Dr. Benzinger would make negative  
14 statements to other hospitals about his residency  
15 training?

16 MR. SULLIVAN: Object to form. Vague.

17 Go ahead and answer.

18 A. That Dr. Benzinger would make negative  
19 comments to other hospitals?

20 Q. (By Mr. Elster) Correct.

21 A. Did Dr. Weisman ever communicate that with me?

22 Q. Yeah.

23 A. Not that I recall.

24 Q. Did you ever make any assurances to Dr.  
25 Weisman that those types of things wouldn't happen?

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1 MR. SULLIVAN: Object to form. Vague.

2 Go ahead and answer.

3 A. I don't recall if that ever happened or not.

4 Q. (By Mr. Elster) You mentioned I believe that  
5 there was a resident who left voluntarily when you were  
6 program director, right?

7 A. Correct.

8 Q. And you also mentioned that there was a  
9 separate resident who left for cause; is that right?

10 A. Correct.

11 Q. And that would have been in the years of 2018  
12 and 2020; is that right?

13 A. That sounds right.

14 Q. Okay. Is it just one person for each category  
15 leaving voluntarily and leaving for cause?

16 A. As best I can remember, yes.

17 Q. Did those individuals receive summative  
18 evaluations?

19 A. I don't believe so, no. I don't think so.

20 Q. Okay. The person who left voluntarily, was  
21 that a resignation?

22 A. I guess, yeah. I guess so.

23 Q. What was that person's name?

24 MR. SULLIVAN: I'm going to object and  
25 instruct the witness not to disclose the name of any

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1 resident under the fundamental right of privacy under  
2 the Delmar Gardens case. It would involve sensitive  
3 and confidential personal information and records.

4 Q. (By Mr. Elster) Do you know who the person's  
5 name is? Or the person's name?

6 A. Yes.

7 Q. Okay. And you're still going to decline and  
8 refuse to answer the question?

9 A. On the advice of counsel, yes.

10 MR. ELSTER: I will certify that question  
11 then.

12 Q. (By Mr. Elster) Similarly, do you know the  
13 name of the individual resident who left for cause?

14 A. Yes.

15 MR. SULLIVAN: I'm going to -- okay.

16 Q. (By Mr. Elster) So you know the name.

17 Generally what was the cause?

18 MR. SULLIVAN: If you can answer it without  
19 disclosing the person's name.

20 A. There was concern about illicit drug use.

21 Q. (By Mr. Elster) Diversion?

22 A. Not diversion specifically, no. Illicit drug  
23 use.

24 Q. Okay. And you know the person's name and  
25 you're going to decline to provide it; is that right?

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1 MR. SULLIVAN: Yes, I would instruct the  
2 witness not to provide.

3 A. Yes.

4 MR. ELSTER: Certify that question too.

5 Q. (By Mr. Elster) Exhibit -- Benzinger Exhibit  
6 37. I'm going to pull it back up.

7 A. Is that one I already have?

8 Q. Yeah. It was an add on. It was going to be  
9 an exhibit yesterday. Let me see if I can find it  
10 here. That was the document that had the track  
11 changed. I think you have that.

12 A. Yeah, somewhere.

13 Q. I think it's this.

14 A. Yeah, the second one.

15 Q. Right. It's that one.

16 A. Got it. Okay.

17 MR. SULLIVAN: Do you want to mark that for  
18 sake of clarity?

19 MR. ELSTER: Yeah, let's do that.

20 (Defendant's Exhibit No. 25 was marked for  
21 identification.)

22 Q. (By Mr. Elster) So the question is in 462 and  
23 463 of that there's something labeled a final summative  
24 evaluation. I mentioned we were talking earlier, have  
25 you seen the final summative evaluation.

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1 A. Uh-huh.

2 Q. Is that it, 462 to 463?

3 A. I would assume so, yes.

4 Q. So when I had asked you earlier have you seen  
5 the final summative evaluation, is that the document  
6 you were referring to that's unsigned and undated?

7 A. Looks like it, yeah.

8 Q. Okay. Are you aware of anything else that  
9 would be considered a final summative evaluation from  
10 Washington University for Dr. Weisman other than 462  
11 and 463?

12 A. Other than what we had previously believed  
13 would suffice with the milestone evaluations, no.

14 Q. So is it the current understanding that 462  
15 and 463 is the final summative evaluation?

16 A. To the best of my knowledge, yes.

17 Q. Would anyone else at Washington University  
18 have more knowledge as to what constitutes the final  
19 summative evaluation?

20 A. It's possible that Dr. Mitchell might, because  
21 I think she was the one that had to sign it. It's  
22 possible that Lauren Gibson might because she was the  
23 one that put it together.

24 Q. Have you seen a signed version of it?

25 A. I'm not sure if I have or not.

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1 Q. Do you know if one exists?

2 A. If we were asked to supply it, I'm sure one  
3 exists.

4 MR. ELSTER: I don't have any further  
5 questions.

6 MR. SULLIVAN: I have no questions. We will  
7 read.

8 VIDEOGRAPHER: Very good. This deposition is  
9 concluded at 2:32 p.m.

10 MR. SULLIVAN: E-Tran without exhibits. No  
11 hard copy.

12 MS. MULLINEAUX: E-Tran with exhibits  
13 attached. No hard copy.

14 MR. ELSTER: PDF condensed with exhibits.

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